



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

October 1, 2020

Council President Joseph P. Lopes
Members of the City Council
City Hall
133 William Street
New Bedford, MA 02740

RE: Wastewater Treatment Plant Contract

Dear Council President Lopes and Members of the City Council:

Enclosed for your consideration is an Order authorizing the Mayor to execute a contract with Veolia Water North America – Northeast, LLC (“Veolia”), in substantially the same form as attached hereto, for operation, maintenance, and management services for the Wastewater Treatment Facility located at 1000 South Rodney French Boulevard and for the City’s 29 sewage pumping stations. The term of said contract is ten years, and it gives the City the option to exercise two five-year extensions.

The City issued a Request for Proposals (“RFP”) for this contract, and Veolia, which is the incumbent operator of the Wastewater Treatment Facility, was the low bidder. The City also convened a technical panel to review the responses to the RFP, and Veolia received high marks.

Representatives of the Department of Public Infrastructure and Veolia will be present on October 8, 2020, to respond to questions the Council may have regarding this matter.

Sincerely yours,

Jon Mitchell
Mayor



CITY OF NEW BEDFORD

CITY COUNCIL

October 8, 2020

ORDERED that, the Mayor be authorized to execute a contract with Veolia Water North America – Northeast, LLC for operation, maintenance, and management services for the Wastewater Treatment Facility located at 1000 South Rodney French Boulevard and the City's 29 sewage pumping stations. The term of said contract is for ten years and gives the City the option to exercise two five-year extensions.

AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES

FOR THE

CITY OF NEW BEDFORD

WASTEWATER TREATMENT FACILITY

BETWEEN

VEOLIA WATER NORTH AMERICA – NORTHEAST, LLC

AND

THE CITY OF NEW BEDFORD, MASSACHUSETTS

DATED AS OF _____

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**AGREEMENT FOR OPERATION, MAINTENANCE
AND MANAGEMENT SERVICES**

THIS AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES (this "Agreement") is made and entered into as of the ___ day of _____, 2020 by and between Veolia Water North America - Northeast, LLC (the "Company"), a limited liability company organized under the laws of the State of Delaware and duly registered as a foreign limited liability company in the Commonwealth of Massachusetts, and the CITY OF NEW BEDFORD, MASSACHUSETTS (the "City") a municipal corporation existing under the laws of The Commonwealth of Massachusetts (the "Commonwealth"). The City or the Company or both may be referred to herein as the "Party" or the "Parties", as the context of the usage of such term may require.

RECITALS:

WHEREAS, the City owns and operates a Grade VII secondary wastewater treatment facility located within the municipal boundaries of the City (as herein more particularly described), the "Wastewater Facility";

WHEREAS, pursuant to Massachusetts General Law Chapter 30B, The City issued a Request for Proposals in December 2019 for the long term operation, maintenance and management of the Wastewater Facility;

WHEREAS, the City issued four addenda to the Request for Proposals, respectively (the "Addenda").

WHEREAS, in response to the Request for Proposals (as amended by the Addenda, being the "RFP") the Company submitted a proposal for the management, operation and maintenance of the Wastewater Facility;

WHEREAS, the City has selected the Company, pursuant to the RFP as amended by the Addenda, and the Company's proposal, including Alternate Bid 2 (pumping stations) and the option to exercise Alternate Bid 1 (dewatered sludge), to operate, maintain, and manage the Wastewater Facility, in accordance with the terms, conditions and provisions of this Agreement and in reliance on the Company's skill, expertise and past successful experience in performing operations, maintenance and management of facilities comparable to the Wastewater Facility;

WHEREAS, Veolia Water North America Operating Services LLC (the "Guarantor") shall execute the Guarantee in the form set forth in Schedule 3 guaranteeing the Company's performance of its obligations under this Agreement, as agreed herein and as required by the RFP;

WHEREAS, the City desires to employ the services of the Company for the operation, maintenance, and management of the Wastewater Facility and the Company desires to perform such services for the compensation provided herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and the terms and conditions hereinafter set forth, the Company and the City hereby agree as follows:

ARTICLE I

DOCUMENTS

Section 1.01 Schedules.

The following Schedules are attached hereto and made a part of this Agreement.

In the event of a conflict or inconsistency between or among the Schedules and the Agreement, it is agreed that the provisions of the Agreement control over the Schedules.

- Schedule 1 - Performance Standards and Guarantees
- Schedule 2 - Operation and Maintenance Standards
- Schedule 3 - Form of Guarantee
- Schedule 4 - Insurance
- Schedule 5 - Operations and Maintenance Fee
- Schedule 6 - Permits
- Schedule 7 - Maximum Utilities Utilization
- Schedule 8 - Equipment and Chemicals Inventory
- Schedule 9 - Pass Through Costs
- Schedule 10 - Personnel
- Schedule 11 - Cost Adjustment Methodology
- Schedule 12 - Form of Performance Bond
- Schedule 13 - Capital Improvement Projects in Progress
- Schedule 14 - Wastewater Facility Description (including site description)

This Agreement constitutes the entire Agreement between the Company and the City with respect to the management, operations and maintenance of the Wastewater Facility and shall govern exclusively the obligations of the Parties.

ARTICLE II

DEFINITIONS; TERMS GENERALLY

Section 2.01 Terms Generally.

Whenever the context may require, any pronouns shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes”, and “including” shall be deemed to be followed by the phrase “without limitation”.

Whenever a party's agreement, approval, or consent is required, such agreement, approval, or consent shall be in the party's sole discretion, unless otherwise explicitly stated herein.

Section 2.02 Definitions.

For purposes of this Agreement, the following words and phrases shall have the following respective interpretations and meanings:

"Administrative Consent Order" means the agreement between the City and the EPA on 12/15/19.

"Affiliate" means the Guarantors and any corporation, partnership, joint venture or other entity controlled by, controlling or under common control with, directly or indirectly, the Guarantors, the Company, or any one of these entities.

"Applicable Law" means any law, rule, regulation, permit, requirement, judicial decree, administrative order, action, determination, guideline, or order of any legal entitlement issued by any governmental body having jurisdiction, applicable from time to time to the siting, design, possession, testing, operation, maintenance or repair of the Wastewater Facility, the acceptance, treatment, storage or discharge of wastewater by the Wastewater Facility, the transfer or handling of Wastewater Sludge by the Wastewater Facility or any other transaction or matter contemplated herein.

"Article" means an Article of this Agreement.

"Assistant Project Manager/Maintenance Manager" has the meaning set forth in Section 4.04(b).

"Authorized Representative" means the Company's or the City's representative as the case may be, and any successors thereto designated pursuant to Section 13.07.

"Billing Month" means each calendar month in each Billing Year, except that (a) the First Billing month shall begin on the Commencement Date, and (b)

the last Billing Month shall end concurrently with the expiration or termination of this Agreement.

“Billing Year” means each fiscal year of the City during the Term of this Agreement, except that (a) the first Billing Year shall begin on the Commencement Date and end on June 30, 2021 and (b) the last Billing Year shall end of the Term or, as applicable, the date of termination, of this Agreement.

“Cake Sludge” means sludge thickened to between 22 and 28 percent solid as required for Alternate 1.

“Capital Expenditure” means any expenditure for (a) the repair, renewal or replacement of any piece of Equipment or component of any equipment or any other component of the Wastewater Facility that has a useful life of at least three (3) years and has an acquisition cost of \$10,000 or more or (b) group or program purchases – the aggregated asset must have a useful life of three (3) years or more and have an aggregated acquisition cost of \$25,000 or more and each individual component must have an acquisition cost of \$1,000 per unit and be integral in placing the program in service or (c) any capital addition to or change in the Wastewater Facility which the City elects to fund or finance and undertake as a special project for the upgrading or improving of the Wastewater Facility.

“Capital Improvement Projects” means projects resulting in improvements to capital property owned by the City.

“Change in Law” means (a) the enactment, adoption, promulgation, modification or repeal after the Contract Date of any federal, state, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory or judicial entity having jurisdiction with respect to the operation, maintenance or management of the Wastewater Facility, or the change in official interpretation after the Contract Date, of any federal, state, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory or judicial entity having jurisdiction with respect to the operation, maintenance or management of the Wastewater Facility, so long as such change in interpretation has been reduced to writing and adopted officially by the

regulatory entity responsible for making the official interpretation, or (b) the imposition, after the Contract Date, of any material conditions on the issuance, modification or renewal of any official permit, license or approval necessary for the operation, maintenance or management of the Wastewater Facility, which, in the case of either (a) or (b) necessitates a Capital Expenditure or modifies the Company's obligations under this Agreement with respect to the Wastewater Facility by establishing requirements for operation, maintenance or management of the Wastewater Facility which are more or less burdensome than the most stringent requirements:

(i) in effect on the Contract Date,

(ii) agreed to by the City in any applications for official permits, licenses or approvals for the Wastewater Facility, other than any requirements set forth in said applications to comply with future laws, ordinances, codes, rules, regulations or similar legislation; or

(iii) set forth in this Agreement or any Schedule hereto.

For the purposes of part (a) of this definition, no enactment, adoption, promulgation or modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement policy with respect to any such requirements shall be considered a Change in Law if, as of the Contract Date, such law, ordinance, code, rule, regulation or similar requirement or enforcement policy would have directly affected the continued operation, maintenance and management of the Wastewater Facility by the City after the Commencement Date in the absence of this Agreement and such law, ordinance, code, rule, regulation, or other similar requirement was officially proposed by the responsible agency and published in final form in the Federal Register or equivalent federal, state or local publication and thereafter becomes effective without further action.

In no event shall a change in any federal, state or local tax law be considered a Change in Law.

"CMMS" means computerized maintenance management system.

“C.M.R.” means Code of Massachusetts Regulations, as in effect from time to time.

“City” means the City of New Bedford, Massachusetts.

“City Fault” means any breach (including the untruth or breach of any City representation or warranty herein set forth), failure, nonperformance, noncompliance or any negligent or willful misconduct by the City under this Agreement (whether attributable to any elected or appointed official, officer, member, agent, employee, contractor, subcontractor of any tier, or any independent contractor of the City) which is not directly attributed to any Uncontrollable Circumstances or Company Fault, and which materially and adversely affects the Company’s rights and obligations or ability to perform under this Agreement.

“Commencement Date” means _____, 2020. On and after the Commencement Date, the Company shall commence and continue its operation, maintenance, and management obligations under this Agreement.

“Commonwealth” means the Commonwealth of Massachusetts and all of its relevant administrative, contracting, and regulatory agencies and offices.

“Company” means Veolia Water North America - Northeast, LLC.

“Company Fault” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, nonperformance, noncompliance or any negligent or willful misconduct by the Company under this Agreement (whether attributable to any officer, member, agent, employee, contractor, Subcontractor of any tier or Independent contractor of the Company or any Affiliate of the Company) which is not directly attributable to any Uncontrollable Circumstance or City Fault.

“Consent Decree” means the agreement entered into with the EPA, the Commonwealth of Massachusetts, the Conservation LAW Foundation and the City on July 29, 1987 including amendments (1990 Modified Consent Decree (1992) and any current or future amendments or modifications.

“CPI” means the CPI-W Northeast Region (Consumer Price Index for Urban Wage Earners and Clerical Workers), as published by the U.S. Department of Labor Statistics.

“Contract Date” means the date first written above.

“Cost Substantiation” means ,with respect to any additional or incremental cost or expense necessarily incurred by the Company and not otherwise reimbursed by the City hereunder, a certificate signed by the Company Authorized Representative stating the reason for incurring such cost , the amount of such cost, and the event or Section of this Agreement giving rise to the Company’s right to incur such cost, and that such cost is, at a maximum, the fair market value price for the materials supplied (it is understood by the Parties that such services or materials may be provided by an Affiliate and it being further understood by the Parties that the fair market value price for services or materials supplied may include a profit allowance for the Company of up to 10% of the total price for the services and materials). Any certification provided by the Company shall include copies of all invoices and charges, together with any additional documentation of such cost or expense incurred which are necessary, in accordance with generally accepted accounting practices and procedures, to verify such cost and expense and to demonstrate the basis for the amount claimed. All the costs to be substantiated shall be subject to the review and conclusive approval of the City.

“CSO” means Combined Sewer Overflow.

“Date of Operation and Maintenance Fee Escalation” means the annual date (July 1st) upon which the Operation and Maintenance Fee Escalator will be applied to determine the annual Operation and Maintenance Fee Escalation during the term of this Agreement.

“DEP” means the Massachusetts Department of Environmental Protection or any successor thereto.

“Dewatered Sludge” means sludge that has undergone a de-watering process.

“Dispute” has the meaning set forth in Section 8.01.

“Dispute Resolution Committee” has the meaning set forth in Section 8.01.

“Enhanced Wastewater Standards” means specific limits pertaining to the effluent quality from the Wastewater Facility set forth in Schedule 1 hereto that may be more stringent than those imposed by Applicable Law from time to time.

“EPA” means the United States Environmental Protection Agency or any successor.

“Equipment” means equipment, including operating and processing equipment, tools and Rolling Stock, owned by the City and in use as of the Contract Date or subsequently procured and/or provided by the City pursuant to this Agreement for use at or associated with the Wastewater Facility (specifically excluding equipment and tools owned by the Company to perform its obligations under this Agreement).

“Event of Default” means any one or more of those events described in Article X.

“Federal Register” means The Federal Register published every business day by the National Archives and Records Administration's Office of the Federal Register.

“Guarantees” means the agreement between the Guarantors and the City in the form set forth in Schedule 3 hereto.

“Guarantors” means legal entities personal or corporate that guarantee performance of this Agreement as to a “Guarantee”.

“Independent Engineer” means a consulting engineering firm having a national reputation for expertise in the field of design, construction and operation of wastewater treatment facilities to be designated by the City subject to the approval of the Company.

“Industrial Pretreatment Program” means a program requiring pretreatment of industrial wastewater at its source.

“Industrial Waste Inventory and Monitoring System” means assets or (equipment) for the collection, treatment, and monitoring of industrial waste.

“Initial Capital Investments” means capital investments by the Company in the Wastewater Facility in the first year of the contract term for which the Company will be reimbursed pro rata on a descending annual scale if the City should terminate the Contract for convenience during the initial ten (10) years of the contract term.

“Insurance” means insurance in the types and amounts more particularly described in Article IX and Schedule 4 hereto.

“KWH” means kilowatt hour.

“Laboratory Manager” has the meaning set forth in Section 4.04(d).

“Liquid Sludge” means sludge thickened to 6-8 percent solids.

“Managed Assets” means all buildings equipment, Rolling Stock and assets that comprise the Wastewater Facility and such pumping stations that the City elects to include in the Contractor’s scope of services.

“Management Team” means the Project Manager, Operations Manager, Assistant Project Manager/Maintenance Manager and Laboratory Manager dedicated to the City. The failure to maintain the required management team will result in financial penalties.

“Maximum Usage KWH/Year” means the maximum amount of electricity consumed in operation of the Wastewater Facility for which payment the City is responsible as a Pass-Through cost and above which the Company is responsible.

“MGD” means million gallons per day.

“M.G.L.” means Massachusetts General Law.

“Miscellaneous Adjustments” has the meaning set forth in Section 6.05.

“Monthly Operating Report” means National Pollutant Discharge Elimination System Discharge Monitoring Report and Veolia Monthly Operating Report.

“National Pollutant Discharge Elimination System” and “NPDES” mean a program that addresses water pollution by regulating point sources that discharge pollutants to waters of the United States.

“Operation and Maintenance Adjustor” means the applicable CPI for any particular year employed to adjust fees to account for inflation.

“Operation and Maintenance Fee” has the meaning set forth in Section 6.02 and Tables S5-1a and S5-1b of Schedule 5.

“Operation and Maintenance Fee Escalation” is the annual increase in the payment for the Operation and Maintenance Fee as set forth in Tables S5-1a and S5-1b of Schedule 5.

“Operation and Maintenance Fee Escalator” is the annual percentage increase in the payment for the Operation and Maintenance Fee as set forth in Schedule 5 hereto.

“Operation and Maintenance Plan” means the plan for operation, maintenance, and management of the Wastewater Facility to be prepared by the Company and submitted to the City in accordance with Section 2.5 of Schedule 2 hereto.

“Operation and Maintenance Report” means the Company’s report, as required by Section 2.4.2 of Schedule 2.

“Operations Manager” has the meaning set forth in Section 4.04(c).

“Pass Through Costs” means the component of the Service Fee calculated pursuant to the Section 6.04 and Schedule 9 hereto.

“Performance Bond” means a Performance Bond in the form set forth in Schedule 12 hereto and described in Section 9.03.

“Permits” means all federal, state and local approvals and permits required to be obtained and/or maintained from time to time in connection with the operation of the Wastewater Facility including, without limitation, the approvals and permits described in Section 4.03 and listed on Schedule 6.

“Person” means any natural or artificial entity including an individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereto.

“Project Guarantor” has the meaning set forth in Schedule 3.

“Project Manager” has the meaning set forth in Section 4.04(a).

“Pumping Station” has the meaning set forth in Table 2.1.2 of Schedule 2.

“Renewal and Replacement Expenses” means expenses for the repair and renewal costs at the Wastewater Treatment Plant and Pumping Stations that are not a Capital Expenditure and are not part of the Operation and Maintenance Fee.

“Renewal and Replacement Funds Fee” has the meaning set forth in Sections 6.01 and 6.03.

“Request for Proposals” and “RFP” mean the Request for Proposals issued by the City in December 2019 for the long-term operation, maintenance, and management of the Wastewater Facility, as amended by the Addenda.

“Rolling Stock” means various materials replenished on a regular basis which are consumed in the operation of the Wastewater Facility, as well as the various carts and other means of transferring said materials from point to point.

“Safety and Security Plan” means a plan to provide safe and secure operation of the Wastewater Facility.

“Safety Committee” means the Company’s committee charged with oversight of the safety of the Wastewater Facility as described in Section 2.7 of Schedule 2.

“SCADA” means supervisory control and data acquisition.

“Schedule” means a Schedule of this Agreement.

“Section” means a Section of this Agreement.

“Septage Receiving Facility” means the septage receiving facility on Shawmut Avenue in New Bedford.

“Service Fee” means the amount payable to the Company by the City for the Services provided under this Agreement calculated in accordance with Article VI.

“Services” means the operation, maintenance, and management of the Wastewater Facility in accordance with the terms and provisions of the Agreement.

“Subcontractor” means any Person engaged by the Company, subject to Section 13.04, to perform any portion of the services on behalf of the Company.

“Successor Wastewater Sludge Contractor” means any sludge disposal contractor other than Synagro.

“Term” has the meaning set forth in Section 13.02.

“Termination Fee” has the meaning set forth in Section 11.03.

“Termination for Convenience” has the meaning set forth in Section 11.03.

“Training Plan” means the plan prepared by the Company detailing its plan to train its personnel to operate the Wastewater Facility.

“Transition Plan” means the written plan for transition of operation, maintenance and management of the Wastewater Facility operations the current operator to the Company, which shall be in form and substance satisfactory to the City.

“Uncontrollable Circumstance(s)” means any act, event or condition that materially and adversely impacts the cost or materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition, in light of the circumstances known or reasonably believed to exist at the time, is beyond the reasonable control and is not a result of the willful or negligent act, or error of omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting in good faith or the failure in good faith to contest any act, event or condition imposed by a third party, in and of itself, by

either party shall not be construed as a willful or negligent act, error or omission or a lack of reasonable diligence of either party.

(a) Inclusions. Subject to the foregoing, the term “Uncontrollable Circumstance(s)” shall include, but not be limited to, the following acts, events, or conditions:

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Wastewater Facility), landslide, earthquake, fire, explosion, flood, hurricane, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, or civil disturbance;

(2) a Change in Law;

(3) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;

(4) the preemption, confiscation, diversion, destruction, or other interference in the delivery or supply of materials or services by, on behalf of, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Wastewater Facility; and

(5) strikes, work stoppages or labor disputes involving employees of non-Affiliates.

(b) Exclusions. None of the following acts, events, or conditions shall constitute Uncontrollable Circumstances:

- (1) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
- (2) changes in financial condition of the City, the Company, the Guarantors, or any of their Affiliates or subcontractors;
- (3) union work rules which increase the Company's operating costs;
- (4) any impact of prevailing wage laws on the Company's costs;
- (5) the consequences of Company error, including any errors of Company affiliates or subcontractors;
- (6) failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the date agreed to;
- (7) strikes, work stoppages or labor disputes involving employees of the Company or any Affiliate;
- (8) failure of Equipment or of equipment owned or leased by the Company (unless caused by Uncontrollable Circumstances); and
- (9) litigation against the Company or any Affiliate prior to the final resolution of such litigation.

"Wastewater Facility" means the certified Grade VII New Bedford Wastewater Treatment Facility located at 1000 South Rodney French Boulevard, New Bedford, Massachusetts, including the site, Equipment and related Wastewater Sludge disposal storage facilities, the outfall discharge chamber, and all accessory or appurtenant fixtures, equipment, tools, and other property, all as more particularly described on Schedule 14 hereto.

“Wastewater Facility Effluent” means the material finally discharged from the Wastewater Facility.

“Wastewater Sludge” means any liquid, semisolid or solid material resulting from the treatment of raw and combined sewage at the Wastewater Facility and which requires disposal as waste material but excluding grit and screenings.

“Workers’ Compensation Acts” means M.G.L. chapter 152, as amended.

ARTICLE III

CONDITIONS PRECEDENT TO THE COMMENCEMENT DATE

Section 3.01 Company Obligations.

The Commencement Date shall be subject to the satisfaction by the Company of the following conditions precedent:

- (a) The Guarantors shall have executed and delivered the Guarantees to the City simultaneously with the execution of and delivery of this Agreement.
- (b) The Company shall have delivered to the City (i) a certificate of an authorized officer of the Company, dated as of the Commencement Date, to the effect that each of the representations of the Company set forth in Section 12.02 of this Agreement is true and correct in all material respects as if made on such date and (ii) opinion of counsel to the Company, in customary form and reasonably acceptable to the City, to the effect set forth in Sections 12.02(a)(b),(d) and (e).
- (c) The City shall have received the documentation more particularly described in Section 9.01 as evidence that all policies of insurance required to be obtained by the Company pursuant to this Agreement have been obtained.
- (d) If so requested by the City, the Company shall have delivered to the City a performance Bond duly executed by its issuer.

- (e) The Company shall have delivered to the City, and the City shall have approved, the Transition Plan.
- (f) The Company shall have recruited, retained and employed all management and other personnel necessary for its performance of the Services hereunder, which personnel shall be duly licensed as and to the extent required by Applicable Law, and shall have delivered to the City a roster of all such personnel together with copies of the licenses of all personnel required to be licensed.
- (g) The Company shall have obtained and shall have submitted to the City copies of all Governmental approvals required to be obtained by the Company by Applicable Law as a condition of performing the Services hereunder.

Section 3.02 City Obligations.

The Commencement Date shall be subject to the satisfaction by the City of the following conditions precedent:

- (a) The City shall have delivered to the Company a certificate of an authorized official of the City ,dated as of _____ to the effect that each of the representations of the City set forth in Section 12.01 of this Agreement is true and correct in all material respects as if made on such date and an opinion of the City Solicitor, in customary form and reasonably acceptable to the Company to the effect set forth in Sections 12.01 (a)(b) (c) and (d)

Section 3.03 Satisfaction of Conditions Precedent.

Upon satisfaction of all such conditions precedent, the City shall give written notice to the Company and the Commencement Date shall occur on _____, 2020 so long as, as of such date:

- (a) No action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any person or federal, state or local government authority or agency

other than the City in any federal, state, or local court, that seeks to enjoin, assess civil or criminal penalties against or obtain any judgment, order or consent decree with respect to the City or the Company as a result of the City's or the Company's negotiation, execution, delivery or performance of the Agreement, provided, however, that such action, suit, proceeding or investigation would, if adversely determined, materially adversely affect this Agreement or the performance by the Parties of their respective obligations hereunder; or

(b) No changes shall have occurred after the Contract Date and on or before the Commencement Date in any applicable federal, state or local rule regulation or ordinance there under, or in the interpretation there of by any applicable regulatory authority, that would make the execution or delivery by the City or the Company of this Agreement or that would make compliance by the City or the Company with the terms and conditions of this Agreement, a violation of such law, rule, regulation, or ordinance.

If all such conditions precedent are not so satisfied or waived, or if any circumstances described in clauses (a) or (b) above, if any, exist and continue as of the Commencement Date, then either Party, by notice in writing to the other, may terminate this Agreement. In the event either Party shall give written termination notice to the other pursuant to this clause, neither party shall be liable to the other.

ARTICLE IV MANAGEMENT OPERATION, MAINTENANCE AND MANAGEMENT

Section 4.01 Overall Company Responsibilities.

On and after the Commencement Date and throughout the term of this Agreement:

- (a) The Company shall operate, maintain, and manage the Managed Assets to process domestic raw sewage, commercial and industrial wastewater and any other influent delivered or caused to be delivered to the Wastewater Facility by the City in accordance with this agreement (including, without limitation, the requirements set forth in the schedules hereto) and Applicable Law.
- (b) Except for Equipment, and other facilities and materials included in the Managed Assets as of the Commencement Date, and except for Capital Expenditures, the Company shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment(i.e. copiers, computers, etc.) fuel, chemicals, supplies, spare parts, expendables, consumables, testing and laboratory analysis and any other item required for operation, maintenance repair, replacement, renewal and management of the Managed Assets in accordance with this Agreement.

Section 4.02 Overall City Responsibilities.

On and after the Commencement Date and during the term of this Agreement:

- (a) Subject to appropriation, the City shall pay, or cause to be paid, the Service Fee to the Company in accordance with the terms and conditions of this Agreement for the Company's performance of its obligations under this Agreement.
- (b) As between the Company and the City, the City shall procure and as the Company's Agreement, all Capital Expenditures in accordance with Article V hereof.

(c) The City shall afford Company access to the Managed Assets to the extent necessary for the Company to perform its obligations hereunder.

(d) The City shall retain responsibility for the operation and maintenance of its wastewater collection system—except those Pumping Stations included in the Managed Assets, the setting of rates and charges to system users, and the billing and collection of fees and charges there from. The City shall retain responsibility for its Industrial Pretreatment Program.

(e) The City shall make available to the Company Equipment warranty information, engineering drawings, calculations, maintenance manuals, operational records, logs, reports, submittals, repair records, audits, and sludge disposal and wastewater disposal information which may be in the City's possession or that of its agents, relating to the design, condition, operation or maintenance of the Wastewater Facility from time to time.

(f) The City shall be responsible, at its cost, but subject to section 6.05 (d) for the disposal of Wastewater Sludge, grit and screenings and solid waste generated by the Wastewater Facility so long as such materials are made available to the City or its designated contractor(s) in the manner specified in Schedule 2 hereto.

(g) The City shall provide for repair of all roadways within the Wastewater Facility.

Section 4.03 Permits

As between the Company and the City, the respective responsibilities with respect to the Wastewater Facility Permits and other Permits required by the Company in order to perform the Services hereunder shall be as set forth in Schedule 6 hereto.

Section 4.04 Management Team

(a) The Company has designated John Caron as the Company's full-time Project Manager, and any City approved successor, shall, within ninety (90) days

after the Commencement Date, reside either within the City or within fifty (50) miles of the Wastewater Facility. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Project Manager. Accordingly, the Company shall not, absent good cause, replace such Project Manager during the term of this Agreement, without the prior approval of the City. If such Project Manager or any City approved successor shall retire, resign as Project Manager, request assignment to another location, or cease employment with the Company, the Company shall not appoint a successor Project Manager without the prior written approval of the City. This approval shall not be unreasonably withheld. If the City fails to respond within 15 days to a written recommendation, it will be assumed that approval is given. If the City, in its sole discretion, determines that the Project Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Project Manager and the City shall arise, the Company upon notice by the City of such circumstance, shall promptly replace such Project Manager with a successor acceptable to the City; provided however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstances regarding the Project Manager.

- (b) The Company has designated Kenneth Henriques as the Company's full-time Assistant Project Manager/Maintenance Manager, and any City approved successor, shall, within ninety (90) days after the Commencement Date, reside either within the City or within fifty (50) miles of the Wastewater Facility. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Assistant Project Manager/Maintenance Manager. Accordingly, the Company shall not, absent good cause, replace such Assistant Project Manager/Maintenance Manager during the term of this Agreement, without the prior approval of

the City. This approval shall not be unreasonably withheld, furthermore, If the City fails to respond within 15 days to a written recommendation, it will be assumed that approval is given. If such Assistant Project Manager/Maintenance Manager or any City approved successor shall retire, resign as Assistant Project Manager/Maintenance Manager, request assignment to another location, or cease employment with the Company, the Company shall not appoint a successor Assistant Project Manager/Maintenance Manager without the prior written approval of the City. This approval shall not be unreasonably withheld. If the City fails to respond within 15 days to a written recommendation, it will be assumed that approval is given. If the City, in its sole discretion , determines that the Assistant Project Manager/Maintenance Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Assistant Project Manager/Maintenance Manager and the City shall arise, the Company upon notice by the City of such circumstance, shall promptly replace such Assistant Project Manager/Maintenance Manager with a successor acceptable to the City; provided however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstances regarding the Assistant Project Manager/Maintenance Manager.

- (c) The Company has designated Collis Soares as the Company's full-time Operations Manager, and any City approved successor, shall, within ninety (90) days after the Commencement Date, reside either within the City or within fifty (50) miles of the Wastewater Facility. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Operations Manager. Accordingly, the Company shall not, absent good cause, replace such Operations Manager during the term of this Agreement, without the prior approval of the City. This approval shall not be unreasonably withheld, furthermore, If the City fails to respond within 15 days to a written recommendation, it will be assumed that

approval is given. If such Operations Manager or any City approved successor shall retire, resign as Operations Manager, request assignment to another location, or cease employment with the Company, the Company shall not appoint a successor Operations Manager without the prior written approval of the City. This approval shall not be unreasonably withheld. If the City fails to respond within 15 days to a written recommendation, it will be assumed that approval is given. If the City, in its sole discretion , determines that the Operations Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Operations and the City shall arise, the Company upon notice by the City of such circumstance, shall promptly replace such Operations Manager with a successor acceptable to the City; provided however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstances regarding the Operations Manager.

(d) The Company has designated Kathy Lambalot as the Company's full-time Laboratory Manager, and any City approved successor, shall, within ninety (90) days after the Commencement Date, reside either within the City or within fifty (50) miles of the Wastewater Facility. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Laboratory Manager. Accordingly, the Company shall not, absent good cause, replace such Laboratory Manager during the term of this Agreement, without the prior approval of the City. This approval shall not be unreasonably withheld, furthermore, If the City fails to respond within 15 days to a written recommendation, it will be assumed that approval is given. If such Laboratory Manager or any City approved successor shall retire, resign as Laboratory Manager, request assignment to another location, or cease employment with the Company, the Company shall not appoint a successor Laboratory Manager without the prior written approval of the City. This approval shall not be unreasonably withheld. If the City fails to respond within 15 days to a written recommendation, it will

be assumed that approval is given. If the City, in its sole discretion , determines that the Laboratory Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Laboratory Manager and the City shall arise, the Company upon notice by the City of such circumstance, shall promptly replace such Laboratory Manager with a successor acceptable to the City; provided however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstances regarding the Laboratory Manager.

Section 4.05 Liquidated Damages.

As set forth in Section 4.01 and Schedules 1 and 2 hereto, the Company is required to satisfy the requirements of Applicable Law and the enhanced Wastewater Standards with respect to the quality of treated effluent discharged from the Wastewater Facility as well as the standards for the Pumping Stations included in the Managed Assets. Failure to satisfy such requirements, or failure to operate the Wastewater Facility in such a manner as to minimize public complaints concerning noise and/or odor emanating from the Wastewater Facility, may, at the election of the City, result in the imposition on the Company of liquidated damages in the manner, and in the amounts set forth in this Section 4.05.

- (a) If the Wastewater Facility satisfies the treated effluent standards imposed by Applicable Law but fails to satisfy any one or more of the Enhanced Wastewater Standards;
- (1) The Company shall provide a plan to the City outlining corrective actions for achieving compliance with the Enhanced Wastewater Standards within five (5) days after written notice of noncompliance given by the City.
 - (2) The City will review and provide written comments on the plan within (48) hours after receipt; and
 - (3) The Company shall immediately implement the plan, which shall address the City's comments.

Failure to either provide a plan and/ or implement the corrective actions set forth in the plan shall result in Company liability for liquidated damages in the amount of \$5,000 per day from such time that either (i) the plan should have been submitted, or (ii) the date on which corrective actions should have commenced pursuant to the plan. Neither the review of or comment on, nor the failure of the City to comment on, any corrective plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that the corrective actions proposed in any such plan will cause the Wastewater Facility to be in compliance with the Enhanced Wastewater Standards, or otherwise impose any liability on the City.

(b) If the Wastewater Facility fails to satisfy any provision of Applicable Law with respect to the quality of treated effluent, the Company shall be required to take the same measures set forth in Section 4.05 (a) above in order to develop and implement a corrective action plan to cause the Wastewater Facility to be in compliance with Applicable Law. Failure to either provide a plan and/or implement the corrective actions set forth in the plan shall result in Company liability for liquidated damages in the amount of \$5,000 per day from such time that either (i) the plan should have been submitted, or (ii) the date on which corrective actions should have commenced pursuant to the plan. In addition, the Company shall be responsible for payment of any fines or damages imposed by either the City or the Company by any regulatory or other governmental agency or an account of any third-party claim as a result of any noncompliance with Applicable Law. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that the corrective actions proposed by any such plan will cause the Wastewater Facility to be in compliance with Applicable Law, or otherwise impose any liability on the City. Should the Company's non-compliance result in a fine and/or administrative order by EPA and/or MADEP, the Company shall be

responsible for any fines and/or administrative actions imposed as a result of their non-compliance.

- (c) If during any Billing Year the Company and/or the City receive complaints of five (5) or more incidents concerning odor allegedly emanating from the Facility and, after investigation by the City in cooperation with the Company, such complaints are determined by the City to be substantiated and legitimate complaints concerning odor emanating from the Wastewater Facility, caused by the Company's failure to operate and/or maintain odor control systems, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to abate any such odor conditions and the Company shall be liable to the City for liquidated damages in the same manner and in the same amounts as would be required in case of Company failure to achieve an Enhanced Wastewater Standard. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement, be deemed to constitute a representation by the City that the corrective actions proposed in any such plan will be sufficient to abate any odor emanating from the Wastewater Facility or otherwise impose any liability on the City.
- (d) If the Company and/or the City receives complaints concerning noise allegedly emanating from the Wastewater Facility in excess of normal operating levels, and, after investigation by the City in cooperation with the Company, such complaints are determined by the City to be substantiated and legitimate complaints concerning noise emanating from the Wastewater Facility in excess of normal operating levels, caused by the Company's failure to operate and/or maintain the Facility's equipment, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to abate any such noise conditions of excess of normal operating levels and the Company shall be liable to the City for liquidated damages in the same

manner and in the same amounts as would be required in case of Company failure to achieve an Enhanced Wastewater Standard. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that corrective actions proposed in any such Plan will be sufficient to abate any noise in excess of normal operating levels emanating from the Wastewater Facility or otherwise impose any liability on the City.

- (e) If the Company fails to provide or maintain staffing levels consistent with the Company's accepted staffing plan including, but not limited to the city's required management team staffing requirements consisting of a Project Manager, Operations Manager, Assistant Project Manager/Maintenance Manager, and Laboratory Manager the Company shall be liable to the City for liquidated damages up to the full cost (wages and related overhead costs) for all shortfalls.
- (f) Liquidated damages. If any, payable to the Company pursuant to Sections 4.05(a)(b), (c) and (d) shall be cumulative, and not mutually exclusive, and, in addition, are supplemental to, and shall not diminish in any manner, the rights and remedies of the City under Articles X and XI hereof.

Section 4.06 Uncontrollable Circumstances: Company Fault.

- (a) Except for payment obligation, and except for obligation of the Parties which by the specific terms of this Agreement are obligations incurred in response to Uncontrollable Circumstances, each Party shall be excused, subject to this Section 4.06, for failure or delay in performance by reason of Uncontrollable Circumstance.
- (b) If either Party shall rely on the occurrence of an act, event or condition as an Uncontrollable Circumstance as the basis for not performing its

obligation under this Agreement, then the Party relying on such act, event or condition shall (i) provide prompt notice to the other Party of the occurrence of the act, event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder to the maximum extent possible, (ii) in accordance with this Agreement, expeditiously take action to correct or cure the act, event or condition preventing performance, (iii) exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests, and (iv) provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability to perform.

- (c) If due to Company Fault, the Wastewater Facility shall be damaged to the extent of preventing Company performance in accordance with this Agreement, the Company shall comply with Section 4.06(b) (i) through (iv) above. In the case of Company Fault, as between the Company and the City, the Company, notwithstanding any other provision in this Agreement, shall be responsible for promptly restoring or repairing the Wastewater Facility at its cost and expense. The Company hereby acknowledges that the City maintains flood insurance and does not presently maintain any additional property damage or loss insurance on the Wastewater Facility and further agrees and acknowledges that the City has no obligation to the Company to obtain or maintain any such insurance coverage. The City hereby acknowledges that the Company does not presently maintain any property damage insurance on the Managed Assets. The Company shall have no responsibility to restore or repair damage to the Managed Assets not due to the Company Fault.
- (d) Except as provided in this Agreement, Company makes no other warranties or representations, express or implied, including, but not limited to, warranties of merchantability and fitness for particular purpose, and all other warranties or representations are hereby expressly disclaimed by Company.

ARTICLE V

CAPITAL EXPENDITURES AND COST SAVINGS

Section 5.01 Capital Expenditures in Progress.

The City from time to time may undertake capital improvements to the Managed Assets. The City shall complete such Capital Expenditures at no cost to the Company, and the Company shall cooperate with the City and its contractors so that such Capital Expenditures can be completed in a timely manner, provided, however, that neither the City nor any such other City contractors shall unreasonably interfere with or impede the Company in performing its obligation hereunder. The Company's obligation to operate, maintain and manage the Managed Assets shall include the obligation to operate, maintain and manage the Managed Assets as modified by the Capital Expenditures as described in Schedule 13 hereto and such future capital improvements the City elects to undertake. The Service Fee shall not be subject to adjustment on account of the undertaking or completion of the Capital Expenditures described in Schedule 13 hereto, provided that such Capital Expenditures are completed in accordance with their respective plans and specifications. The City shall provide to the Company copies of all operating manuals, maintenance manuals and equipment specifications required to be delivered to the City in connection with the implementation of any such Capital Expenditures and copies of "as built" drawings relating to any such Capital Expenditures.

Section 5.02 Capital Expenditures Report.

Within ninety (90) days after the Commencement Date, the Company shall conduct a physical audit of the Managed Assets and provide the City with a reasonably detailed report recommending, on a priority basis, Capital Expenditures and other services, if any, that the City should consider undertaking relative to preserving or upgrading of the Managed Assets to facilitate compliance with Applicable Law, including Applicable Law relating to safety. The Company shall update such information annually by conducting such an audit and preparing and filing such a report with the City within one hundred eighty (180) days after

the close of each Billing Year during the Term of this Agreement. Notwithstanding anything in this Section 5.02 to the contrary, the City may at any time perform or contract for the performance by an independent third party of a Wastewater Facility and Pumping Station Capital Expenditures audit. A copy of any such audit and report shall be provided to the Company.

Section 5.03 Elective Capital Expenditures.

The City may from time to time, upon the recommendation of the Company or otherwise, elect to make the Capital Expenditures relating to the Managed Assets, The City shall be responsible for all planning, design, and construction of any such Capital Expenditures and shall bear the entire financial responsibility therefore without contribution from the Company. The Company shall cooperate with the City in connection with any such Capital Expenditures implementation; provided, however, that any such implementation shall not unreasonably interfere with or impede the Company in performance of its obligation hereunder. Further, no such Capital Expenditure shall alter or modify the scope of Services to be provided by the Company hereunder absent a corresponding adjustment to the Operation and Maintenance Fee pursuant to Section 6.02(b)

Section 5.04 Non-Elective Capital Expenditures.

- (a) Except as provided in Section 5.04(b), the City shall be responsible for any equipment or other component of the Managed Assets to the extent that any such repair, renewal or replacement requires a Capital Expenditure. The Company, in connection with its performance of the Services, shall advise the City from time to time as to any such repair, renewal or replacement that may be, or may become, necessary, in order to afford the City as much time as possible to arrange for the procurement of equipment, materials and services necessary to effect any such Capital Expenditure. Subject to the provisions of applicable public procurement law, the City may, but is not obligated, to engage the Company to effect any such Capital Expenditure following agreement of reasonably negotiated

fees. The Company shall cooperate with the City in connection with any such Capital Expenditure implementation.

(b) Notwithstanding Section 5.04 (a) to the contrary, the Company shall reimburse the City for all costs and expenses incurred by the City in connection with any Capital Expenditure, resulting from or necessitated by failure of the Company to perform predictive, preventative or corrective maintenance or repairs in accordance with its obligation hereunder. If the City has reason to believe that any such failure has occurred, the Company shall provide to the City access to the Company's maintenance and/or repair records for the purpose of reviewing the circumstances giving rise to the need for a Capital Expenditure. In connection with any such review, the Company shall have an opportunity to bring to the attention of the City factors, if any, other than maintenance or repair related factors that may have caused or contributed to such circumstances.

ARTICLE VI PAYMENTS

Section 6.01 Service Fee.

Commencing with the first Billing Month and for each Billing Month thereafter, the City shall, subject to appropriation, pay to the Company a Service Fee for managing, operating and maintaining the Wastewater Facility pursuant to the terms and conditions of this Agreement. The Service Fee shall be computed in accordance with the following formula:

$$SF = O \& M + PT + MA.$$

Where:

SF = Service Fee

O & M = Operation and Maintenance Fee (operations, management, chemicals, labor, benefits, profit and overhead) PLUS Renewal and Replacement Funds Fee (parts, Subcontractors, and materials)

PT = Pass Through Costs

MA = Miscellaneous Adjustments

Section 6.02 Operation and Maintenance Fee.

(a) For any Billing Month, the Operation and Maintenance Fee shall be in the amount set forth in Schedule 5.1. as adjusted on a pro rata daily basis for a short Billing Month, in the first and last Billing Years, and further adjusted pursuant to this Section 6.02.

(b) The Operation and Maintenance Fee shall be adjusted periodically in accordance with the provisions of Schedule 5.

Section 6.03 Renewal and Replacement Funds Fee

The City shall annually establish an amount for Renewal and Replacement Expenses, which shall be known as the Renewal and Replacement Funds Fee. The City shall pay the Company one-twelfth of the annual Renewal and Replacement Funds Fee on a monthly basis. The City shall inform the Company of the annual Renewal and Replacement Funds Fee amount within one week of the City Council's approval of the annual budget.

In the first year of the Agreement, the Renewal and Replacement Funds Fee shall be five hundred thousand dollars (\$500,000). In year two of the Agreement, the Renewal and Replacement Funds Fee amount may, at the City's sole discretion, be increased to seven hundred thousand dollars (\$700,000). In subsequent years of the Agreement, the Renewal and Replacement Funds Fee amount may, at the City's sole discretion, be further increased by the CPI in the manner described in Schedule 5.

Renewal and Replacement Expenses shall be itemized in order for the City to track them appropriately. Renewal and Replacement Expenses in excess of \$5,000 require prior City approval. Any Renewal and Replacement Expenses incurred after that year's Renewal and Replacement Funds Fee has been exhausted must receive prior approval from the City. The Company may not charge a mark-up on any Renewal and Replacement Expenses unless and until the total Renewal and Replacement Expenses for that year of the Agreement have exceeded 120% of the Renewal and Replacement Funds Fee established for that year, and the City has approved any such mark-up. For example, in the first year of the Agreement, when the Renewal and Replacement Funds Fee is \$500,000, the Company could not charge a mark-up on any Renewal and Replacement Expense until the total Renewal and Replacement Expenses for that year exceeded \$600,000.

At the end of the fiscal year (June 30), any unused portion of the Renewal and Replacement Funds Fee shall, at the City's discretion, be rolled over for the Company's use in the following fiscal year or be returned to the City. At the City's discretion, these additional funds may be allocated to Capital Improvement Projects pursuant to the provisions in Section 5.04(a).

Section 6.04 Pass Through Costs.

Pass Through Costs for any Billing Month shall be the sum of additional City authorized costs, in addition to expenses set forth in Schedule 9 hereto which were incurred by the Company during such Billing Month, to the extent of Cost Substantiation, exclusive of profit to the Company or any Affiliate.

Section 6.05 Miscellaneous Adjustments

The Miscellaneous Adjustments (MA) component of the Service Fee for any particular Billing Month shall be the adjusted amounts determined in accordance with this Section 6.05.

- (a) The amount determined in accordance with the methodology set forth in Schedule 11 hereto in the event that the actual influent flow rates, or

biological loadings of influent, depart from the baseline parameters set forth in Schedule 1 hereto.

- (b) A negative amount equal to the amount of liquidated damages, if any, payable by the Company in respect of such Billing Month pursuant to Section 4.05.
- (c) A negative amount equal to the cost, as estimated by the City, for any particular Billing Month of performing any required predictive or preventative maintenance specified in Schedule 2 hereto the Company fails to perform.
- (d) A negative amount equal to the amount, if any, expended by the City during such Billing Month for repair, renewal or replacement Capital Expenditures pursuant to Section 5.04 hereof and Section 2.4.5 of Schedule 2 hereto.
- (e) A positive or negative amount as may be appropriate as a result of Capital Expenditures that may be made to the Managed Assets. However, no such amount shall constitute a Miscellaneous Adjustment component unless (i) agreed to by the parties and (ii) unless the City determines that inclusion of such amount as Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued hereunder, including, without limitation, Revenue Procedure 2017-13.
- (f) A positive or negative amount, subject to Cost Substantiation, to reflect any increased or decreased cost incurred by the Company (net of any available insurance proceeds), in connection with its performance of the Services as a result of any Uncontrollable Circumstance; provided, however, that no such amount shall constitute a Miscellaneous Adjustment component

unless (i) agreed to by the Parties and (ii) the City determines that inclusion of such amount as a Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations as described in Section 141 of the Internal Revenue Code and regulations and other official interpretation issued hereunder, including, without limitation, Revenue procedure 2017-13.

- (g) A negative amount determined in accordance with the agreement of the Parties to reflect any reduction in costs incurred by the Company as a result of the implementation of any operation and maintenance improvement proposed by the Company and approved by the City pursuant to Section 5.04. However, no such amount shall constitute a Miscellaneous Adjustment component unless the City also determines that inclusion of such amount as a Miscellaneous Adjustment will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitations, Revenue Procedure 2017-13.
- (h) A positive or negative amount, subject to Cost Substantiation, to reflect any increased or decreased cost incurred by the Company in connection with its performance of the Services as a result of any request by the City to implement nitrogen reduction optimization measures at the Wastewater Facility pursuant to the Administrative Consent Order; provided, however, that no such amount shall constitute a Miscellaneous Adjustment component unless the City determines that inclusion of such amount as a Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations as described in Section 141 of the Internal Revenue Code and regulations and other official

interpretation issued hereunder, including, without limitation, Revenue procedure 2017-13.

Section 6.06 Billing and Payment of Company's Invoices

- (a) The Company shall submit its invoice to the City for each preceding Billing Month no later than the tenth (10th) day after the close of each Billing Month. Each element necessary to calculate the Service Fee payment due to the Company shall be reflected in said invoice.
- (b) The City shall pay the Company the Service Fee within forty-five (45) days after the date of receipt by the City a complete invoice for any Billing Month. If the City disputes any portion of a complete invoice, the City shall pay the undisputed amount and the Dispute relating to the balance shall be resolved in accordance with Article VIII.

Section 6.07 Information, Data and Reports

Together with the invoice submitted by the Company to the City pursuant to Section 6.06(a), the Company shall deliver to the City the Monthly Operating Report for the preceding Month.

Section 6.08 Additional Payment Provisions.

- (a) The City shall have the right to equitably adjust the Service Fee payment formula over the course of the Term, as necessary, to comply with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued hereunder, including, without limitation, Revenue Procedure 2017-13. Any such adjustment shall be such that the fixed and variable components of the Service Fee are within the specified percentages allowed by the private activity limitations described in Section 141 of the Internal Revenue Code

and regulations issues thereunder. Adjustments shall not entitle the Company to additional compensation, nor shall any adjustment reduce the aggregate compensation payable to the Company under this Agreement absent the consent of the Company. Should such adjustments render impossible continued compliance with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations issued thereunder, the City reserves the right to terminate this Agreement upon thirty (30) days' notice to the Company. Any such termination shall be deemed to be a Termination for Convenience pursuant to and governed by Section 11.03 hereof.

- (b) The Service Fee may be otherwise adjusted by the Parties subject to (i) mutual agreement as to the amount and/ or methodology and (ii) determination by the City that any such adjustment will not contravene the Applicable Law (including, without limitations, any law relating to procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued hereunder, including, without limitations, Revenue Procedure 2017-13.
- (c) The Service Fee may be otherwise adjusted by the Parties subject to mutual agreement as to the amount and methodology in the event that there is a change in the discharge limits established in the City's National Pollution Discharge Elimination System (NPDES) and/or any other Change in Law.

ARTICLE VII INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 7.01 Indemnification.

To the fullest extent permitted by applicable law, the Company shall protect, defend, indemnify and save the City and its agents, officials, employees, servants, and consultants, including contractors or subcontractors with whom the City may

have contracted, harmless from and against, (i) all claims, demands, fines, assessments, fees, penalties, injunctive relief and/or amercements imposed by a court of competent jurisdiction, any agency of the United States or the Commonwealth of Massachusetts, or a third party in an action pursuant to 33 U.S.C. 1365 as a result of the Company's failure to meet the requirements of any permit, law, order, or regulation applicable to the performance or non-performance of Company's obligations or operations under this Agreement and (ii) any and all claims, demands, fines, liabilities, damages, judgment losses, costs, expenses, suits, actions, and causes of action of every kind and character, which may arise in favor of any third party on account of illness, disease, environmental pollution, loss or destruction of property, services, wages, death or personal injuries, to the extent caused by the negligent acts or omissions or willful misconduct of the Company or its officials, directors, employees or agents in the performance or non-performance of its obligations or operations under this Agreement, except to the extent any such damages are caused by the negligence or willful misconduct of the City, or its officials, directors, employees or agents. Further, the Company agrees that its aforementioned duty to protect, defend, and indemnify the City shall include the obligation to indemnify the City for all reasonable expenses, court costs and attorney's fees including those incident to appeals incurred by or imposed upon by the City in connection with the above indemnity for any loss, damage, injury, or other casualty. The Company further agrees to pay all reasonable expenses and attorney's fees incurred by the City in establishing the right to indemnity hereunder.

Section 7.02 Waiver.

The Company and the City hereby waive loss or damages arising pursuant to this Agreement for recovery from the other to the extent that such loss or damage is covered by collected insurance policy proceeds and will require their respective insurers to waive all rights of recovery and subrogation against the City or the Company in the situations in which this Section 7.02 operates.

Section 7.03 Limitation of Liability.

The company and the city acknowledge and agree that because of the unique nature of the undertakings contemplated by this agreement, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the city or the company as a result of a breach of this agreement by the city or the company. However, in no event, because of a breach of this agreement or any cause, whether based upon contract, tort (including negligence or strict liability,), warranty, delay or otherwise, arising out of the performance or nonperformance by the city or the company of their obligations under this agreement including, without limitation, suits by third persons, shall the city or the company be liable for or obligated in any manner, to pay incidental, special, punitive, consequential or indirect damages of any nature, whether occurring during or subsequent to the performance of this Agreement.

Section 7.04 Survival.

This Article VII shall survive the termination of this Agreement.

**ARTICLE VIII
DISPUTE RESOLUTION**

Section 8.01 Scope.

To facilitate the timely and effective resolution of any controversy, claim, or dispute that may arise under this Agreement (each, a “Dispute”), the Parties shall establish, within thirty (30) days after the Commencement Date, a Dispute Resolution Committee consisting of two senior management representatives of each of the Company and the City; provided, however, that no such representatives may be directly involved in the performance of City or Company obligations, respectively, under this Agreement. Written notice of the appointment of such representatives shall be delivered by each Party to the other no later than sixty (60) days after the Commencement Date. The appointed

representatives are subject to change, and written notice of any such change by each Party shall be delivered to the other Party. The Dispute Resolution Committee shall meet as often as the circumstances may deem necessary, to resolve any Dispute. To the extent the Dispute Resolution Committee cannot, after good faith attempts, resolve any Dispute, either Party to the extent its interests are adversely impacted, may refer the matter to non-binding mediation to be conducted in the Commonwealth under the auspices of a firm or individual specializing in the mediation. If, despite the good faith efforts of the parties to resolve a Dispute, mediation does not conclude with a resolution of the Dispute, either Party may refer the Dispute to a court in the Commonwealth possessing competent jurisdiction, including, without limitation, the Federal District Court for the District of Massachusetts.

Section 8.02 Covenant to Perform.

The Parties shall continue to perform under this Agreement, without interruption or slowdown, pending resolution of any Dispute.

Section 8.03 Survival

This Article VIII shall survive termination of this Agreement.

**ARTICLE IX
INSURANCE AND PERFORMANCE BOND**

Section 9.01 Insurance Coverages Certificates Premium Payments.

Prior to the Commencement Date, the Company shall secure and continuously maintain through the term of this Agreement the insurance specified in Schedule 4 ("Required Insurance") to protect the Company and the City from claims of the Company's employees under Workers' Compensation Acts and claims for bodily injury, death or property damage which may be caused by the negligence or other legal fault of the Company and arise out or result from the Company's

obligations and operations under this Agreement or anyone directly or indirectly employed by the Company for whose acts or omissions the Company may be liable. The City shall not establish and give any notice to the Company of the Commencement Date unless and until the Company shall have provided the City proof (including copies of required endorsements to policies if requested by the City) that the insurance coverages listed in Schedule 4 and required to be secured by the Company have been secured and will be in full force on the Commencement Date. Certificates of insurance shall (i) be furnished to the City prior to the Commencement Date, (ii) be in form and coverage reasonably satisfactory to the City, (iii) list the various coverages, and (iv) contain the statement requiring thirty (30) days prior written notice cancellation or non-renewal in the policies given to the City by registered mail, return receipt requested. In addition, and on reasonable notice, the City may request, and the Company shall provide, whatever insurance forms, endorsements, or other information may be necessary for the City to review the insurance provided by Company under this Agreement. Company agrees to provide notice to City of any material changes to the insurance provided to City under this Agreement within 60 days of the date of such change. All such notices shall name the City and identify this Agreement.

Section 9.02 Company Obligations and Policy Requirements.

- (a) The Company's insurers under the policies of insurance listed in Schedule 4 hereto shall have no right of recovery or subrogation against the City or the Company, it being the intention of the Parties that any insurance policy shall be primary coverage as respects the City's insurance policies, and Company's actions under this Agreement for any and all losses covered by the insurance listed in Schedule 4 hereto.
- (b) The City shall be listed as a certificate holder and an Additional Insured with respect to Commercial General Liability, Business Automobile Liability and Umbrella Liability coverages.

(c) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums or for assessments under any form or policy.

(d) The Company shall assume and shall be solely responsible for the satisfaction of any and all deductibles and self-insured retentions contained in its insurance coverages as well as any excluded loss or losses.

(e) All insurance required to be secured and maintained under this Agreement shall be procured from insurance companies authorized to do business in the Commonwealth, and all such insurers shall have a rating of at least A- in the latest edition of Alfred M. Bests Insurance Reports.

If, at any time during the term of this Agreement, the City notifies Company in writing that any policy listed in Schedule 4 hereto has become reasonably unsatisfactory to the City as to form or substance for reasons stated in such notice or if an insurance company issuing any policy listed in Schedule 4 shall be or become, reasonably unsatisfactory to the City for reasons stated in such notice, the Company, upon notice thereof from the City, shall immediately obtain a new and substitute policy, submit the same to the City for approval, and submit a certificate and copy of the policy, if requested, to the City as provided in Section 9.01; provided, however, any dispute regarding this provision will be resolved through the dispute resolution procedures contained in this Agreement.

(f) Failure of the Company to secure and/or maintain the insurance listed in Schedule 4 hereto shall not relieve it from any liability under this Agreement, nor shall the insurance company pursuant to Article VII.

(g) The Company's obligation to secure, deliver and maintain the insurance policies and coverages specified in this Agreement shall be considered as "material" for purposes of Section 10.01.

Section 9.03 Performance Bond

The Company shall provide to the City, not later than thirty (30) days after the execution of and delivery of this Agreement, a Performance Bond issued by a surety reasonably acceptable to the City, The Performance Bond shall be in an amount equal to 100% of the Service Fee for the previous Billing Year, or in respect of the first Billing Year, 100% of the Service Fee for the first Billing Year estimated by the City. The Performance Bond shall be continuously renewed, extended or replaced for as long as required by the City, any such renewal, extension, or replacement to be effective not later than sixty (60) days prior to expiration of the then-effective Performance Bond.

ARTICLE X EVENTS OF DEFAULT

Section 10.01 Damages as Ordinary Remedy.

The Parties agree, except as otherwise specifically provided for in this Agreement, that (1) neither Party shall have the right to terminate this Agreement, and (2) in the event that either Party breaches any obligation under this Agreement, or in the event any representation made by either Party is untrue in any material respect, the other shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or the performance of any obligation hereunder, and that such right to recover damages or to secure the performance of such obligations as provided herein shall ordinarily constitute an adequate remedy for any breach of such obligation or any material untruth in any such representation.

Section 10.02 Events of Default by Company.

The following shall constitute Events of Default by the Company:

- (a) persistent and repeated failure or refusal of the Company to perform timely any material obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of

this Agreement; provided that failure by the Company to operate the Wastewater Facility in accordance with Applicable Law for more than ten (10) cumulative days in any Billing Year shall, ipso facto, constitute persistent and repeated failure or refusal;

(b) failure of the Company to pay any amount owed to the City under this Agreement within forty-five (45) days following the date any such amount has become due and payable;

(c) (i) the Company's or any Guarantor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Company or any Guarantor under laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer by the Company or any Guarantor approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the Company or any Guarantor which shall substantially interfere with its performance hereunder;

(d) default of any Guarantor under its respective Guarantee;

(e) any failure by the Company to provide or renew the Performance Bond in accordance with the requirements of Section 9.03; or

(f) the Company's abandonment or failure to operate the Wastewater Facility for more than one (1) day in the Billing Year.

Section 10.03 Events of Default by City

The following shall constitute Events of Default on the part of the City:

- (a) persistent and repeated failure or refusal of the City to perform timely any material obligation under this Agreement: provided, however, that insofar as any such failure or refusal relates to payment obligations of the City, Section 10.03(b) shall govern;
- (b) failure of the City to pay amounts owed to the Company under this Agreement within forty-five (45) days following the date any such amount has become due and payable; or
- (c) (i) the City's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefits of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer by the City approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the City which shall substantially interfere with its performance hereunder.

Section 10.04 Default Notices.

Neither Party may exercise its termination rights pursuant to Sections 11.01 or 11.02, as applicable, on account of an Event of Default described in Section 10.02 or 10.03 respectively, unless and until such Party shall have given the other party written notice of its failure or refusal to perform and opportunity to cure the default as provided below. If an Event of Default specified in a required notice of default is cured within thirty (30) days after such notice or if such Event of Default cannot be cured within thirty (30) days through the exercise of due diligence but

expeditious and substantive steps are taken within said thirty (30) day period to commence to cure the Event of Default and thereafter complete the cure pursuant with due diligence to completion, there shall be no right of termination with respect to such Event of Default under Section 11.01 or 11.02, as the case may be. Events of Default other than those described in Sections 10.02 (a) or (b) and 10.03 (a) or (b), shall not require any notice as a prerequisite to termination under Section 11.01 or 11.02, respectively.

ARTICLE XI TERMINATION

Section 11.01 City Termination for Event of Default by Company.

- (a) If the City shall have given the Company notice that an Event of Default has occurred pursuant to Section 10.02 (a) or (b) and such Event of Default is not cured by the Company in accordance with Section 10.04 of this Agreement, the City may terminate this Agreement upon thirty (30) days prior notice to the Company.
- (b) If an Event of Default has occurred pursuant to Section 10.02 (c), (d), (e) or (f) the City may terminate this Agreement forthwith and, except as provided in Section 11.06, shall have no further monetary obligations to the Company.
- (c) Termination by the City pursuant to this Section 11.01 shall not preclude the City from seeking recourse, subject to Section 7.03, for damages or any other relief available to it at law or in equity.

Section 11.02 Company Termination for Event of Default by City.

- (a) If an event of default has occurred pursuant to Section 10.03 (c), the Company may terminate this Agreement forthwith.

(b) If the Company shall have given the City notice that an Event of Default has occurred pursuant to Section 10.03 (a) or (b) and such Event of Default is not cured by the City in accordance with Section 10.04 of this Agreement, the Company may terminate this Agreement upon ninety (90) days prior notice to the City.

(c) Termination by the Company pursuant to this Section 11.02 shall not preclude the Company from seeking recourse, subject to Section 7.03, for damages or any other form of relief available to it at law or in equity.

Section 11.03 Termination for Convenience

The City shall have the right to terminate the Agreement, at its sole discretion, for its convenience and without cause including, without limitations, on account of the City's failure to appropriate funds to support the City's payment obligations hereunder after the close of the first fiscal year of the City during the Term or on account of circumstances specified in Section 13.01 at any time after the execution of this Agreement upon ninety (90) days written notice to the Company, If the City exercises its right to terminate this Agreement pursuant to this Section 11.03, the City shall, unless prohibited by Applicable Law, pay the Company a Termination Fee in addition to amounts, if any, due to the Company pursuant to Section 11.06.

The Termination Fee paid shall be determined based upon Table 11.03 below if termination to this Section 11.03 occurs within the first year of the Term. Thereafter, the Company shall be reimbursed a prorated amount of the Termination Fee (such pro-ration to reflect a decline by 1/10th of the Termination Fee each year during the Term of Agreement). No additional Termination Fee will be granted after year 10. Except as provided in Section 11.06, the City shall have no additional monetary obligation to the Company.

Table 11.03 – Liquid Sludge disposal vs. Cake Sludge PLUS all City Pumping Station termination fees.

Final Scope of Work	Totals
Base Bid with Liquid Sludge disposal PLUS All City Pumping Stations	\$401,115
Base Bid with Cake Sludge disposal PLUS All City Pumping Stations	\$465,565

The above Termination Fee shall be determined based upon the scope of work performed at the time of termination in accord with the RFP Base Bid and the Bid Alternatives selected by the City.

Section 11.04 Termination for Labor Unrest

If personnel employed by the Company and performing services pursuant to the Company’s obligation under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under this Agreement for a period in excess of three (3) days, the City may, in its sole discretion, by notice to the Company, terminate this Agreement forthwith, without any monetary obligation to the Company other than as set forth in Section 11.06.

Section 11.05 Termination for Uncontrollable Circumstances

If an Uncontrollable Circumstance shall have the effect of preventing performance of a material obligation of the Company for a period of thirty (30) days, the City,

upon notice to the Company may, at its sole discretion, terminate this Agreement forthwith, notwithstanding that such Uncontrollable Circumstance could be cured by the City's procurement or implementation of a Capital Improvement Project which the City determines, in its sole discretion, not to procure or implement. Upon any such termination, the City shall have no monetary obligation to the Company except as provided in Section 11.06.

Section 11.06 Termination Transition

- (a) Upon termination of the Company's right to perform this Agreement pursuant to Section 11.01, 11.02, 11.03, 11.04, or 11.05 hereof or upon the expiration of the term of this Agreement, the Company shall, as applicable:
- (i) cease the provision of Services, as applicable;
 - (ii) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other City property at the Wastewater Facility;
 - (iii) promptly remove from the Wastewater Facility all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, but not limited to sheds, trailers, workshops and toilets) and repair any damage caused by such removal, and generally restore the Wastewater Facility to its configuration and condition as of the Commencement Date, reasonable wear and tear and Capital Expenditures expected.
 - (iv) clean the Wastewater Facility, and leave the same in a neat and orderly condition;
 - (v) promptly remove all employees of the Company and any Subcontractors and vacate the Wastewater Facility;
 - (vi) promptly deliver to the City copies of all subcontracts, together with a statement of:

The items ordered and not yet delivered pursuant to each agreement;

- The expected delivery date of all such items;
- The total cost of each agreement and the terms of payment ; and

- The estimated cost of cancelling each agreement;
- (vii) deliver to the City promptly a list of:
- All special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Wastewater Facility; and all other supplies, materials, machinery, equipment, and other property previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Wastewater Facility;
- (viii) unless the City directs otherwise, terminate all Subcontractors and make no additional Agreement with Subcontractors;
- (ix) promptly transfer to the City all warranties given by any manufacturer or Subcontractor with respect to particular components of the Wastewater Facility;
- (x) give written notice of termination , effective as of date of termination of this Agreement, promptly under each policy of Insurance (with a copy of each such notice to the City) but permit the City to continue such policies thereafter at its own expense, if possible; and
- (xi) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's costs, and take no action which shall increase any amount payable to the City under this Agreement.
- (b) Upon termination of or expiration of this Agreement, the Company shall provide, and shall use its best reasonable efforts to cause its Subcontractors to provide, technological and design advice and support to the City or any replacement operator designated by the City. Such advice and support shall be for a period of twelve (12) months and shall include providing any plans, drawings, renderings, blueprints, operating manuals, or other information useful or necessary for the City or any replacement operator to perform services comparable to the Services. If this agreement is terminated by the

City pursuant to Section 11.01 or 11.04 hereof, the Company shall be obligated to pay the costs and expenses of undertaking its post-termination responsibilities under this Section 11.06. If this Agreement is terminated by the Company pursuant to Section 11.02, 11.03 or 11.05, the City shall pay to the Company's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Company in satisfying the requirements of this Section 11.06(b)

(c) Notwithstanding the foregoing provisions of this Section 11.06 to the contrary, if the City or the Company shall terminate this Agreement prior to the end of the initial ten (10) year Term or any exercised five (5) year extension Term, the Company shall, for up to ninety (90) days after the actual termination date (as opposed to the notice of termination date) make fully available its managers and employees performing services at the Wastewater Facility to continue to perform the Services contemplated in this Agreement, or such lesser amount of Services as the City shall determine, in order to provide a smooth and orderly transition of the management, operation and maintenance of the Managed Assets to the City administrators, managers and personnel or, as applicable, the City's successor Company; provided however, in no event shall such provision of Services by the Company extend beyond the twentieth (20th) anniversary of the Commencement Date. The Company shall fully cooperate with the City to effectuate such a transition, including the provision of training and "know how" in the procedures and techniques employed by the Company in meeting its obligation under Section 4.01. The City shall determine the number of days, if any, not to exceed ninety (90) days, that the Company shall comply with this section 11.06(c)

(d) Notwithstanding the termination of this Agreement, the City shall compensate the Company for performing Services requested pursuant to Section 11.06 (c) in an amount equal to the Operation and Maintenance Fee calculated for the last full Billing Month immediately prior to the termination date; provided however, such Operation and Maintenance Fee shall (i) be

calculated on the basis of a daily Operation and Maintenance Fee and (ii) shall be reduced on a pro rata basis to reflect the number of Company employees performing services on a daily basis. To the extent the Company incurs Pass Through Costs for such period, the City shall pay or, as applicable, reimburse such amount to the Company. The Company shall invoice the City for such Operation and Maintenance Fee and Pass Through Costs as calculated pursuant to this Section 11.06 (d) within fifteen (15) days after the end of each calendar month after the termination date, and the City shall pay to the Company the amount due and owing pursuant to this Section 11.06(d) within forty-five (45) days thereafter. The Company shall comply with the invoicing and date and information provisions of this Agreement in submitting any such invoice to the City.

- (e) The Company recognizes and understands that the transition outlined in this Section 11.06 may well result in the City or any successor operator(s) designated by the City employing or attempting to employ some or all of the managers and/ or personnel employed by the Company and performing Services at the Managed Assets. The Company shall facilitate the transfer and employment of any manager(s) and/or personnel who may desire to be employed by the City or any successor operator designated by the City.
- (f) All data and information collected, generated, prepared, or provided by the Company as required by or pursuant to this Agreement shall be and remain the property of the City and shall be turned over to the City within ten (10) days after the earlier to occur of the termination or expiration of this Agreement. The Company shall also transfer any and all computer software, hardware, licenses, source codes and other similar information to the City, at no cost to the City other than future license fees to third party licensors, upon the termination of this Agreement.
- (g) The Company shall, upon the request of the City at the termination or expiration of this Agreement, promptly deliver to the City, at no cost or expense to the City, two copies of the then current Operation and

Maintenance Plan. As built drawings shall be included in such manuals and such manuals shall incorporate such drawings as they occur.

(h) The Contractor is entitled to payments for undepreciated Initial Capital Investments. Table 11.06 (h) below identifies the Initial Capital Investments. If termination to pursuant to Sections 11.02, 11.03, or 11.05 occurs within the first year of the Term, the Company shall be reimbursed the lower of (i) the value(s) in Table 11.06; or (ii) the Company’s actual costs for the Initial Capital Investment(s). If termination pursuant to sections 11.02, 11.03, or 11.05 occurs thereafter, the Company shall be reimbursed a prorated amount equal to the lower of (i) Table 11.06 values; or (ii) the Company’s actual costs for the Initial Capital Investment(s), both of which shall be reduced by 1/10 for each year the Agreement has been in effect. By way of example, if termination occurs in the second year of the Agreement, the amounts in (i) and (ii) shall be reduced by 10%; if termination occurs in the third year of the Agreement, the amounts in (i) and (ii) shall be reduced by 20%. No additional Initial Capital Investment payments will be granted after year 10.

Table 11.06 Initial Capital Investments by the Contractor:

Table 11.06		
<u>Description</u>	<u>Costs</u>	<u>Anticipated implementation date, months following commencement</u>
Aeration Improvements (main valves, air flow metering and controls)	\$220,000	+12

CSO monitoring equipment	\$25,000	+3
Chlorine mixers	\$42,500	+6
Landscaping Equipment	\$40,000	+2
TOTAL	\$327,500	

(i) This Section 11.06 shall survive the termination of this Agreement

Section 11.07 Survival. This Section XI shall survive the expiration or termination of this Agreement.

ARTICLE XII

REPRESENTATIONS

Section 12.01 Representations of City.

The City represents to the Company that:

- (a) The City is duly organized and an existing entity under the laws of the Commonwealth of Massachusetts and is duly authorized to carry on the governmental functions and operations as contemplated by this Agreement.
- (b) As of the Contract Date, the City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the City (i) have been duly authorized by the City, acting by and through its City Council and Mayor (ii) do not require any other approvals by any other governmental officer or body that has not been obtained, other than those permits or approvals that may have to be

renewed or reissued during the term of this Agreement, (iii) do not require any consent or referendum of voters, (iv) will not violate any judgment, order, law or regulation applicable to the City, and (v) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a part or by which the City or its assets may be bound or affected.

(c) This Agreement has been duly entered into by the City and, as of the Contract Date, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject to (1) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors' rights or remedies generally, (2) general equitable principles concerning remedies and (3) limitations on the enforceability of rights to indemnification by federal or state laws or regulations or public policy.

(d) To the best of the City's information and belief as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligation hereunder, or which, in any way, would adversely affect the validity or enforceability of the this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

Section 12.02 Representations of Company

The Company hereby represents to the City that:

- (a) The Company is qualified to do business in the Commonwealth and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- (b) As of the Contract Date, the Company has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental office or body, that has not been obtained other than applicable permits or approvals that may have been renewed or reissued during the term of this Agreement, (iii) will not violate any judgment, order, law or regulation applicable to the Company or any provisions of the Company's articles of incorporation and by-laws, and (iv) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Company under this agreement or instrument to which the Company is a party or by which the Company or its assets may be bound or affected.
- (c) Since submittal of its proposal in response to the RFP, there has been no material adverse change in the Company's or the Guarantors financial condition which would impair the Company's ability to perform its obligation under this Agreement or the Guarantors ability to fulfill its obligation under the Guarantee.
- (d) This Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of the Company, fully enforceable in accordance with its terms, subject to (1) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors rights to remedies generally, (2) general equitable principles concerning remedies and (3) limitations on the enforceability of rights to indemnifications by Applicable Law or public policy.

(e) To the best of Company's information and belief, as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Company's knowledge, threatened against the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Company of its obligation hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other Agreement or instrument entered into by the Company in connection with the transaction contemplated hereby.

(f) As of the Contract Date, the Company's proposal is genuine and not collusive, the Company has not colluded, conspired, or agreed directly or indirectly with any other proposer or person, firm or corporation, to fix the unit prices of its proposal or proposals of any other proposer or to secure any advantage against any person, firm or corporation interested in this Agreement, all statements contained in the Company's proposal are true and correct.

Section 12.03 Materiality of Representations

The representations enumerated in Sections 12.01 and 12.02 are material for purposes of this Agreement.

ARTICLE XIII

MISCELLANEOUS

Section 13.01 Qualifying Management Contract

It is the intent of the parties that this Agreement qualify as a management contract complying with the provisions and requirements of the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation,

Revenue Procedure 2017-13. In the event that, in the reasonable determination of the City, this Agreement is, or ceases to be, such a qualifying management contract, the City reserves its rights, pursuant to and in accordance with Section 11.01 to modify or terminate this Agreement.

Section 13.02 Term

The Term of this Agreement (the term) shall commence on the Commencement Date and shall terminate on the tenth (10th), fifteenth (15th), or twentieth (20th) anniversary of the Commencement Date, unless earlier terminated in accordance with the terms and conditions hereof, and depending on whether or not the City exercises its option to enter into the first and second 5-year extension period. On the ninth and fourteenth anniversaries of the Commencement Date, the City shall advise the Company in writing whether or not it will exercise its option to enter into a 5-year extension period for years 11 through 15, and years 16 through 20. The decision to enter into extension periods shall be at the City's sole option and made in accordance with applicable procurement law at the time of renewal. During the extension periods, the Operation and Maintenance Fee shall continue to escalate pursuant to Schedule 5. The Company shall not be entitled to any other adjustments in the Operation and Maintenance Fee during the extension periods.

Section 13.03 Assignment.

This Agreement shall not be assigned by either Party without the prior written consent of the other Party, as evidence by or instrument in writing executed by its Authorized Representative; provided, however, that the Company may assign its interest without such consent to any Affiliate, successor or parent of the Company if the Company shall remain liable for all obligations under this Agreement, and the Guarantor, pursuant to Guarantee, fully guarantees the performance of such assignees obligations under this Agreement. Additionally, the City may assign this Agreement, without the consent of the Company, to any validly constituted agency or authority of the City or the Commonwealth or a duly created public corporation or authority.

Section 13.04 Subcontractors.

- (a) The City shall have the right, in its sole discretion, to approve all Subcontractors proposed to be engaged by the Company to perform any portion of the Services. The Company shall furnish the City written notice of its intention to engage any Subcontractor, together with all material information requested by the City or otherwise available to the Company. In the event the City fails to respond to any such notice of intention within twenty (20) days of receipt thereof, the City shall be deemed to have approved the proposed Subcontractor. The approval or withholding thereof by the City of any proposed Subcontractor shall not create any liability of the City to the Company, to third parties or otherwise in no event shall any subcontract be awarded to any person who, under Applicable Law and in accordance with standard procedures, is debarred, suspended or disqualified by the Commonwealth or the City from contracting any services within the scope of the Services between the City and the Company. The Company shall be entirely responsible for the performance of its Subcontractors. The Company shall pay or cause to be paid all direct Subcontractors all amounts due in accordance with their respective Subcontractors. No Subcontractor shall have any right against the City by virtue of this Agreement for labor, services, materials or equipment furnished. The Company acknowledges that its indemnity obligations under Section 7.01 hereof shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Services.
- (b) The Company shall take all reasonable actions to encourage minority-owned business enterprises and women-owned business enterprises to compete for portions of the Services that are proposed to be subcontracted by the Company.

Section 13.05 Further Assurances

Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The City shall, and shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the Company and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.

Section 13.06 Relationship of the Parties

Except as otherwise explicitly provided herein, neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, agent, employee or legal representative of any other Party or to create any fiduciary relationship between or among the Parties. The Parties agree that the Company has entered into this agreement and shall be performing the services contemplated herein as an independent contractor.

Section 13.07 Notices and Authorized Representatives

- (a) Any notices or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail; postage prepaid, as follows:

To the Company:

Veolia Water North America – Northeast
LLC

53 State Street, 14th Floor

Boston, MA 02109

Attention: _____

With a copy to:

General Counsel

Veolia North America

53 State Street, 14th Floor

Boston, MA 02109

To the City:

Commissioner

New Bedford Department of Public
Infrastructure

1105 Shawmut Avenue

New Bedford, MA 02746

With a copy to:

New Bedford City Solicitor

133 William Street

New Bedford, MA 02740

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

(b) For purposes of this Agreement, the Parties respective Authorized Representatives are as follows:

For Company: _____

For City: Jonathan F. Mitchell, Mayor
133 William Street
New Bedford, MA 02740

Either Party may change its Authorized Representative at any time by written notice to the other Party.

Section 13.08 Waiver

The waiver by either Party of a default or a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of such default or breach.

Section 13.09 Entire Agreement: Modifications and Amendments.

The provisions of this Agreement, including the present and all future Schedules, shall (a) constitute the entire Agreement between the Parties for the operation, maintenance and management of the Wastewater Facility and supersedes any negotiation, proposal or Agreement prior to the date of this Agreement, there being no agreements or understandings other than those written or specified herein, and (b) unless otherwise specifically recognized in this Agreement, shall not be modified or amended except by written agreement duly entered into and

executed by the Authorized Representatives of the Parties with the same formality as this Agreement.

Section 13.10 Headings

Captions and headings and the Table of Contents in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 13.11 Governing Law

This Agreement and any questions concerning its validity, construction or performance shall be governed by the law of the Commonwealth of Massachusetts, irrespective of the place of execution or of the order in which the signatures of the Parties are affixed or of the place or places of performance.

Section 13.12 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original.

Section 13.13 Severability

In the event that any provisions of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

Section 13.14 Interest on Overdue Payments

All payments to be made under this Agreement by either Party outstanding after the applicable due date shall bear simple interest at the maximum rate permitted

by state law, if applicable, or at the prevailing prime rate of interest published from time to time in the Wall Street Journal, whichever rate is lower.

Section 13.15 Payment Disputes

If any Party shall dispute an amount owing to the other Party, such Party shall give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and shall pay all undisputed amounts on the due date. Interest at the rate specified in Section 13.14 shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.

Section 13.16 No Liability of Officers and Employees

Neither the mayor nor any member of the City's City Council nor any officer, agent, representative or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provisions of this Agreement, because of either Party's execution or attempted execution or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

Section 13.17 No Pledge of Credit

The Company shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any other form of indebtedness. The Company further warrants and represents that it has no obligation or indebtedness. The Company further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE MADE AND EXECUTED THIS AGREEMENT, AS OF THE _____ DAY OF _____, 2020.

<p>Veolia Water North America – Northeast, LLC</p> <p>_____</p> <p>By: Title:</p>	<p>City of New Bedford, Massachusetts</p> <p>_____</p> <p>By: Jonathan F. Mitchell Title: Mayor</p>
<p>CERTIFIED that funds are available</p> <p>_____</p> <p>By: Robert Ekstrom Title: Auditor</p>	<p>DEPARTMENT Public Infrastructure</p> <p>_____</p> <p>By: Jamie Ponte Title: Commissioner</p>
<p>APPROVED as to Form and Legality</p> <p>_____</p> <p>By: Mikaela A. McDermott Title: City Solicitor</p>	<p>Chief Financial Office</p> <p>_____</p> <p>By: Ari Sky Title: Chief Financial Officer</p>
<p>Purchasing Department</p> <p>_____</p> <p>By: Molly Gilfeather Title: Director of Purchasing</p>	

SCHEDULES

SCHEDULE 1

PERFORMANCE STANDARDS AND GUARANTEES

WASTEWATER TREATMENT REQUIREMENTS

The Company shall operate and maintain the Wastewater Facility in accordance with Applicable Law pertaining to wastewater treatment. The Wastewater Facility influent characteristics are identified in Table S1-1 below. The Operation and Maintenance Fee reflects that these characteristics are subject to +/- 10% changes, and variance within such 10% range shall not be the basis of any adjustment to the Operation and Maintenance Fee. In addition, the Company shall operate the Wastewater Facility to be in compliance with the specific performance standards outlined in the Agreement and Schedules to the Agreement, including the performance standards and guarantees set forth within this Schedule 1. Specific compliance parameters with respect to effluent quality from the Wastewater Facility are included in Table S1-2. All analytical methods used to demonstrate compliance with these standards shall be according to methods approved by the City and DEP.

TABLE S1-1

WASTEWATER SYSTEM INFLUENT

Parameter	Influent Characteristics
BOD5, mg/l	269
TSS, mg/l	190
Annual Average Flow (mgd)	22.4
Peak Flow (mgd)	75(1)

TABLE S1-2

WASTEWATER SYSTEM STANDARDS

Parameter	NPDES PERMIT LIMIT Average monthly	Contract Limit Average Monthly
CBOD, mg/l	25	20
TSS, mg/l	30	20

(1) The Wastewater Facility has an automatic peak flow regulator at the influent set at 75 mgd.

SCHEDULE 2

OPERATION AND MAINTENANCE STANDARDS

2.1 REQUIRED SERVICES

2.1.1 Wastewater Facility

The Company shall perform the Services in a professional, efficient and economical manner and in accordance with the terms and provisions set forth in the Agreement and in compliance with Applicable Law and generally accepted practices, procedures and standards for municipal wastewater treatment facilities. The Company shall, at all times, keep the Wastewater Facility in good repair and working order. The Company shall provide uninterrupted Services and perform Services twenty-four (24) hours per day, seven (7) days per week.

Operational decision making shall always be based on the following overall objectives (not listed according to priority):

- Compliance with Applicable Law
- Protection of health and welfare of the public
- Protection of the health and safety of the operating staff
- Preservation of the long-term capability to supply wastewater services
- Protection of the environment
- Protection and preservation of the Equipment and other components of the Wastewater Facility
- Maximization of operational efficiency and minimization of operational costs
- Achievement of the “zero tolerance” program objectives for odor control and noise at the Wastewater Facility.

2.1.2 Pumping Stations

The Company will be responsible for managing, operating and maintaining the City’s 29 Pumping Stations as set forth in Table 2.1.2.

Table 2.1.2

	Pump Station	Address
1	Belleville Avenue	618 Belleville Ave.
2	Coggeshall Street	200 Coggeshall St.
3	Cove Road	1095 Cove Rd.
4	Dottin Place	175 Amanda Ave.
5	East Rodney French	1699 East Rodney French Blvd.
6	Forbes Street	1110 Forbes St.
7	Fort Tabor Park	1000 South Rodney French Blvd.
8	Front Street	249 MaCarthur Dr.
9	Hall Estates	AppleTree Lane
10	Hanover Street	172 Hanover St.
11	Hathaway Road	388 Hathaway Rd.
12	Howard Avenue	99 River Rd.
13	Howland Street	28 Howland St.
14	Industrial Park	107 Duchaine Blvd.
15	Jones Street	41 Aviation Way
16	Joyce Street	1189 Joyce St.
17	Marlborough Street	1112 Marlborough St
18	Merrimac Street	41 Merrimac St.
19	Peckham Road	Northwest Street
20	Pequot Street	1149 Pequot Street
21	Pope Island	86 Pope's Island
22	Potter Street	357 Potter St.
23	Rowe Street	149 Wilbur St.
24	Sassaquin Avenue	1477 Sassaquin Ave.
25	Shawmut Avenue	1482 Shawmut Ave.
26	Valley View Road	74 Valley View Dr.
27	Wamsutta Street	38 Wamsutta St.
28	Welby Road	55 Welby Rd.
29	Zuckerman Farms	96 Joy Road

Table 2.1.2 identifies the Pumping Stations that are included in the Managed Assets.

The Pumping Stations shall be operated in accordance with the following objectives:

- Compliance with Applicable Law
- Protection of health and welfare of the public
- Protection of the health and safety of the operating staff
- Preservation of the long-term capability to supply wastewater services
- Protection of the environment
- Protection and preservation of the Equipment and other components of the Pumping Stations
- Maximization of operational efficiency and minimization of operational costs
- Achievement of the “zero tolerance” program objectives for odor control and noise at the Pumping Stations.

2.2 OPERATION AND MAINTENANCE

On and after the Commencement Date and through the term of the Agreement, the Company shall manage, operate and maintain the Managed Assets in accordance with the Agreement and the requirements set forth in this Schedule 2. The Company shall operate the Managed Assets to convey and process domestic raw sewage, commercial and industrial wastewater, and any future influent allowed by the City in accordance with the NPDES Permit, the Consent Decree, the Administrative Order and the terms and provisions of this Agreement. The Company shall comply with the requirements of 314 C.M.R. 12 (Operations and Maintenance of Sewer Systems and Maintenance of Sewer Systems and Wastewater Treatment Facilities) as applicable, and the policies of the Board of Certification of Operators of Wastewater Treatment Facilities.

The Company shall maintain the Managed Assets in good working order and repair and in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Company shall

maintain the aesthetic quality of the Wastewater Facility as originally constructed and subsequently modified, with due allowance for reasonable wear and tear and depreciation. The Company shall perform all predictive, preventative and corrective maintenance procedures in accordance with Applicable Law, and generally accepted industry maintenance practices, procedures and standards for municipal wastewater treatment facilities, but in no event less frequently and comprehensively than that recommended or specified in manufactures warranties on new Equipment purchased pursuant to this Agreement, and shall fully cooperate and assist the City, at the Company's sole cost and expense, in enforcing existing equipment warranties and guaranties relative to the Wastewater Facility.

The Company shall develop and implement, making use of the existing City-owned computer hardware and software at the Wastewater Facility to the extent determined to be appropriate by the Company, a comprehensive computer-based maintenance management program that develops readily available historical data, including an inventory of spare parts and provisions for enforcing existing equipment warranties and guarantees and maintaining all warranties on new equipment purchased after the Commencement Date. The Company shall implement such a maintenance management program to include preventative, predictive, and corrective maintenance for all components of the Managed Assets, including but not limited to:

- Buildings and structures
- Electrical systems and instrumentation
- Mechanical equipment
- Odor control systems
- Rolling Stock
- Laboratory, monitoring and sampling equipment
- Heating, ventilation, and air conditioning
- Communication equipment (i.e. telephones, facsimiles, etc.)
- Computer systems
- Chemical feed systems

- Pumping systems
- Auxiliary power facilities
- Air pollution control
- SCADA facilities
- Other facilities and Systems contained within the Managed Assets
- Other specialized tools and equipment

The Company shall document its maintenance program in a computerized maintenance management system that the City shall have direct and complete access to the program. For the Wastewater Facility, the Company shall provide an appropriate package and incorporate the approved maintenance program within that package. (Although the city would prefer the use of Lucity which it currently uses for all city assets.) At contract completion/termination, the Company shall convey the CMMS package to the City for its continued use. This shall include licenses, maintenance agreements and all similar instruments. For the Pumping Stations included in the Managed Assets, the Company shall use the City's existing Lucity system that has been populated with the Pumping Stations.

The Company shall perform maintenance of the Wastewater Facility to preserve long-term reliability and conservation of the Wastewater Facility. Such maintenance shall be performed in accordance with the terms and provisions of this Agreement, the Company's Operation and Maintenance Plan, routine maintenance schedule, federal, state and local requirements, and industry standards. The Company shall maintain documentation of all maintenance activities.

The subsequent sections set forth requirements for the operation and maintenance for the major Wastewater Facility components. The sections below are intended to address the major activities required. The following

sections, however, are not intended to include all specific activities that are necessary for meeting the performance requirements set forth in this Agreement and the Schedules hereto.

2.2.1 WASTEWATER TREATMENT FACILITY

The Company shall operate, maintain and manage the Wastewater Facility in accordance with this Agreement. The Company is responsible for ensuring that the effluent discharged from the Wastewater Facility complies with Applicable Law and within the standards set forth in the Agreement. Accordingly, the Company is responsible for reviewing historical City data including flow, concentration and loading variations (i.e. instantaneous, hourly, daily, monthly, and yearly.) The Company is responsible for monitoring and maintaining the balance of the HVAC system throughout the Wastewater Facility. The Company is responsible for reviewing all available information about the Wastewater Facility and should not rely solely on the information presented.

SOLIDS HANDLING

The Company shall deliver all Wastewater Sludge to the containers specified for usage by Synagro or any Successor Wastewater Sludge Contractor designated by the City. The Company shall be responsible for guaranteeing that the Wastewater Sludge delivered complies with the requirements, (i.e. quantity characteristics of sludge, percent solids) of the City's contract with Synagro dated October 1, 2016. The Company shall deliver liquid Wastewater Sludge to Synagro's tanker trucks at the loading dock or sludge cake to the container in the sludge loadout facilities with the outside doors closed. The Company shall take a sludge sample for each tanker while it is loading and split the sample with the driver. The Company shall keep good records of solid percentage. The Company shall coordinate its management of Wastewater Sludge handling Facilities with Synagro or its successors, as the case may be, to minimize costs to the City for Wastewater Sludge disposal.

SEPTAGE RECEIPT

The City does receive septage at the Septage Receiving Facility located on Shawmut Avenue and delivers such septage to the Wastewater Facility for processing by the Company as a component of the Services. The Company is not authorized to make separate arrangements for receipt septage. Any receipt of septage will be at the sole discretion of the City and shall be coordinated with the Company. The Company shall accept septic waste at the designated receiving station within the plant, (Monday – Friday, 7:30 am to 2:30 pm) from all recreational vehicles as directed by the City. A sign in log should be kept on file of all vehicles.

GRIT AND SCREENING HANDLING

The Company shall deliver grit and screenings to the dumpster/container located in the headworks building on the Wastewater Facility. Within a reasonable time, frame, the Company shall notify the City when the dumpster/container will reach capacity. Upon notification by the Company, the City shall remove the grit and screenings dumpster/container from the headworks building and replace the dumpster/container.

SOLID WASTE MANAGEMENT

The Company shall deliver all collected solid waste to the designated solid waste dumpsters located on the Wastewater Facility and shall notify the City within a reasonable time of when any such dumpster will reach capacity. The City shall be responsible for removing any filled dumpster and replace it with another.

ODOR CONTROL FACILITIES

The Company shall be responsible for the continuous operation and maintenance of odor control Equipment in accordance with established operating performance criteria for the various systems and equipment. The

Company shall operate such Equipment consistent with the “zero tolerance” program objectives for odor control, except for periods of preventative or emergency maintenance or for reduction of noise. The Company shall be responsible for optimizing the operation of the existing and future odor control system so that it performs to its designed capacity and capability.

The Company shall control all noise and odors generated from within the Wastewater Facility and will be responsible for complying with air quality permit requirements. The Company shall develop a “zero odor tolerance” control program including procedures for responding to each complaint and notification to the City of odor complaints and their resolution, and documentation of such complaints. Such program shall be fully described in a monthly report submitted to the City. Specifically, the Company shall perform the following:

- Implementation of the recommendations contained in the “zero odor tolerance” program
- Regular monitoring of odor control system performance
- Surveys on and off the Wastewater Facility by Wastewater Facility staff
- Development of a 24 hour per day odor hotline to be staffed at all times
- Development of contingency plans for controlling odors in the event of mechanical failure or process upset
- Training for mechanical ventilation and scrubber systems
- Housekeeping, preventative maintenance, and other standard operating procedures related to odor reduction
- Development of a written complaint response procedure that would include the following elements: complaint name and address, time of day, weather conditions including wind speed and direction, odor description, duration of episode, and follow-up by plant staff.

The Company shall notify the City immediately regarding any significant or unusual circumstances effecting the operation of the Wastewater Facility. The Company shall obtain City approval prior to significant operational changes that could be reasonably foreseen to effect odor emissions.

2.2.2 PUMPING STATIONS

The Company shall operate, maintain and manage the Pumping Stations in accordance with this Agreement. The Company is responsible for ensuring that the operations comply with Applicable Law, minimize system overflows and are maintained within the standards set forth in the Agreement.

The Company shall perform all routine, preventative, predictive and ongoing maintenance of the Pumping Stations such that the facility and structures be maintained at a level adequate for the efficient, long-term reliability and preservation of the capital investment, including maintaining the building in an aesthetically attractive and clean condition. The Company shall maintain all operational equipment and meter systems in a serviceable condition maximizing their life and functional purpose.

The Company shall maintain the Pumping Stations and the sites in good working order and repair in a neat and orderly condition. Such maintenance shall be in accordance with the Operation and Maintenance Plan. The Company shall provide or make provisions for all labor, materials, and equipment necessary for the normal operation and maintenance of the facilities, including the required predictive and preventive maintenance requirements of the Operation and Maintenance Plan.

The City has agreed to remove rags/screenings for each of the Pumping Stations. The Company will collect the rags/screenings from each of the Pumping Stations' screens and bar racks and make these rags/screenings available to the City for pick up. The City will then dispose of the rags/screenings.

The City will maintain brush cutting services as needed to maintain and keep perimeter fencing at all stations clear of overgrowth.

The Company will be responsible for grass cutting and landscaping within all fence lines at all Pumping Stations except the following 8 pump stations (which will be the City's responsibility):

Shawmut Ave
Welby Street
Pequot Ave
Industrial Park
Cove Rd.
East Rodney French
Coggeshall Street
Jones Street

Snow plowing to allow access to gates will remain the City's responsibility with the Company responsible for keeping all walkways clear.

Pump Station wet well cleaning will be a shared responsibility, on an as needed basis, between both the Company and the City. The City agrees to supply a vacuum truck, driver, and laborer (when available), with the Company supplementing labor to accomplish this task in a safe manner (minimum one employee). When the City is not available the Company will use outside vendors and the cost will be charged to the Renewal & Replacement Funds Fee provided the City has given prior approval and the cleaning is not a direct result of failure or neglect of the Company's proper operation and/or maintenance of the station, in which case the Company will bear the entire cost including the city's standard charges.

Shawmut Ave Pump Station will continue to be cleaned weekly (unless specified by the city) using the aforementioned agreement.

2.2.3 ANALYTICAL SERVICES

The Company shall perform testing, sampling and any other analytical procedures to demonstrate compliance with its obligations under the Agreement, applicable regulatory requirements, and Permit provisions. Such testing shall include, but not be limited to, influent and effluent analytical testing, metals analysis and sludge cake analysis. The Company shall perform all applicable testing related to process control and wastewater monitoring. The Company shall be responsible and liable for conducting all necessary analyses whether the analyses are conducted at the laboratory in the Wastewater Facility, at an offsite laboratory operated by the Company, or through a subcontracted service. Any subcontracted laboratory must be appropriately certified to perform the required analyses subject to approval by the City in accordance with Section 13.04 of the Agreement. The Company shall prepare the data received from the testing laboratory for all applicable regulatory, Permit monitoring, and operating reports and shall forward the results from the laboratory to the appropriate state and regulatory agencies.

2.2.4 EQUIPMENT AND CHEMICALS

The Company shall keep all equipment in good operating condition and maintain adequate Equipment and spare parts in inventory in order to facilitate maintenance and repairs not constituting Capital Expenditures, in a timely fashion so as not to disrupt the operation of the Managed Assets. Any such repairs, shall, at a minimum, meet the specifications provided for Managed Assets plans and specifications.

The Company shall operate all used or useful Equipment, including Equipment placed in service, and perform all tests and testing as may be required or recommended pursuant to applicable warranties, commercial or industrial standards and Applicable Law. The Company shall make reasonable efforts to enforce, on behalf of the City, all warranties or agreements related to existing

Equipment, materials and services that are at the Managed Assets as of the Commencement Date, as well as any replacements thereof or additions thereto. The Company shall make reasonable efforts to obtain extensions of warranties or agreements, as appropriate. The Company shall be responsible for promptly notifying the City in the event of any Equipment failure that necessitates or may necessitate a Capital Expenditure.

All Equipment, with the exception of Rolling Stock, and chemicals provided by the City or the Company on or after the Contract Date, including any Equipment and chemicals on order by the Company or the City for the Managed Assets, shall be deemed to be owned by the City and shall remain a part of the Managed Assets upon termination or expiration of this Agreement. All such Equipment including Rolling Stock shall be in good operating condition, subject to normal wear and tear. Equipment and chemicals provided or to be provided by the Company pursuant to the provisions of this Agreement shall be restricted to the Company's use as necessary in performance of its obligations under this Agreement.

2.2.5 BUILDINGS AND GROUNDS SERVICES

The Company shall provide for maintenance and repair of landscaping and roadways associated within the Wastewater Facility, including snow removal, in accordance with Section 4.02(g) of the Agreement.

The Company shall perform Services to maintain the current condition of the Wastewater Facility throughout the Term of the Agreement, reasonable wear and tear expected, and at a level adequate for the efficient, long-term reliability and preservation of the capital investment. The Company shall at a minimum perform the following maintenance activities relevant to the buildings and grounds:

- a. Wash all windows twice a year or more frequently on an as needed basis.
- b. Report all roof leaks within 10 days of discovery.
- c. Implement regularly scheduled pest control measures.

- d. Repair all plumbing leaks and failures immediately.
- e. Damp mop all floors twice per week or more frequently on an as needed basis with a cleaning solution appropriate for use in such facilities. All spills are to be immediately cleaned.
- f. Strip all floors and apply new floor finish annually or as often as necessary to maintain the aesthetics of the facility.
- g. Apply floor finish to the extent necessary to maintain appearance and safety standards.
- h. Wash down wall tiles and clean all other walls every sixth Billing Month commencing with the first Billing Month of this Agreement.
- i. Painting Schedule:
 - a) The primary odor control treatment system will be painted during the first year of the agreement and once every 10 years thereafter
 - b) Outdoor exposed steelwork will be painted every 5 years
 - c) Pump skids (suction to discharge valves) will be painted at least every 8 years with the Influent Pumps painted by the end of contract year 2
 - d) Piping runs in equipment galleries/tunnels will be touched up annually as needed to address visible coatings failures.
- j. Clean offices and restrooms Monday through Friday.
- k. Provide daily collection services for solid waste and other disposable items generated by the Wastewater Facility during performance of Services. A central location(s) shall be provided for storage. All solid waste shall be made available to the City for disposal on at least a weekly basis, in accordance with Section 2.2.1 of this Schedule 2.
- l. Plow snow from all roadways leading to and within the Wastewater Facility beginning at the entrance in Fort Taber Park where sign to plant is located.

m. Shovel all sidewalks to maintain access to the Wastewater Facility free of ice and snow.

n. Vacuum all carpeted areas on a weekly basis, shampoo all rugs/carpeted areas twice per year or more frequently on an as-needed basis.

o. Maintain all landscaping of grounds with-in the fenced area of the Wastewater Facility including grass cutting, weeding, and trimming of vegetation.

2.2.6 UTILITIES

As part of the Commencement Date, the Company shall be responsible for obtaining, supplying and paying for all utilities including but not limited to natural gas, heating, fuel oil and telephone, except potable water. The cost for electricity shall be paid directly by the City up to the maximum usage limit more particularly described in Schedule 7.

2.2.7 INDUSTRIAL PRETREATMENT PROGRAM

The Company shall coordinate with the designated person responsible for the City's Industrial Pretreatment Program and shall notify the City promptly if it becomes aware of any known and/or suspected illegal discharges.

2.3 STAFFING REQUIREMENTS

The Company shall staff the Managed Facilities consistent with its staffing plan provided as part of its proposal and approved by the City. This proposal should include city's required management team. If the Company does not comply with the terms of its approved staffing plan for a period of 60 calendar days, the Company shall reimburse the City for the full cost (wages and related overhead costs) for all such short falls.

2.4 OPERATION AND MAINTENANCE COSTS

As set forth in Section 4.01 (b) of the Agreement, the Company shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (i.e. copiers computers etc.) fuel, chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis, and any items required for the Services, in accordance with the terms and provisions of the Agreement.

2.4 OPERATIONS REVIEW

The City will actively participate in review of Services performed by the Company and any Subcontractor throughout the term of the Agreement.

2.4.1 MONTHLY OPERATING REPORTS

The Company shall prepare Monthly Operating Reports regarding the Services for submission to DEP and EPA, as applicable. The Monthly Operating Reports shall be prepared on or before the 10th date of each Billing Month for the previous Billing Month. The Monthly Operating Reports shall be submitted to the City for review and comment prior to submission to the DEP and EPA, as applicable. The Company shall prepare the Monthly Operating Reports in a format subject to approval by the City and DEP. Each Monthly Operating Report shall include data pertaining to performance, including analysis of permit requirements, flows and any other information required by the applicable regulatory agencies. The Monthly Operating Reports shall also include a description of maintenance activities and emergency services performed during the previous month. The Company shall include the following categories of information in the Monthly Operating Reports:

- EPA's monthly Discharge Monitoring Report (DMR) requirements (i.e flow (MGD) high flow diversion, primary sludge, aeration tanks, return sludge, waste sludge, solids, chlorine dosage, chlorine residual, fecal coliform, settled solids, BOD, COD, suspended solids, turbidity, temperature, pH, Wastewater Facility Effluent)

- An accounting of all expenses from the prior month
- Nitrogen data
- The number of samples collected and analyzed for each reportable parameter
- Electrical usage
- Itemized listing of materials, chemicals and supplies used
- Insurance claims filed or pending disposition
- All correspondence, citations, notices, directives or similar information received from any federal, state or local government regulatory agencies having jurisdiction over management, operations, maintenance or ownership of the Managed Assets not otherwise provided to the City by the Company
- Transaction records, data and information arranged or performed by the Company, or for the benefit of the City or the Company, relative to the Managed Assets
- Report of all citizen calls and responses
- Report of all citizen complaints and actions taken with respect to each such complaint
- Report describing compliance of the Managed Assets with Enhanced Wastewater Standards and Applicable Law, including a summary table of violations
- Summary of preventative maintenance performed
- Summary of unscheduled repairs and action taken
- Summary of scheduled inspections and repairs and action taken or postponed
- Explanations for unscheduled repairs and postponements of repairs
- Information on utility outages
- The results of safety tests or other monitoring procedures conducted by staff or any governmental body

2.4.2 SYSTEM INSPECTIONS

The City or its authorized agents and representatives from the governing regulatory agency (EPA, DEP) reserve the right to visit or inspect the Managed Assets at any time. The City or its authorized agents and representatives may call upon the Company at any time for an oral review of any matter pertaining to the Services.

The City or its authorized agents and representatives shall perform an annual inspection of the Managed Assets which shall be scheduled at a time mutually acceptable to the Company and the City and their authorized agents or representatives but in no event later than sixty (60) days after the close of each Billing Year. The purpose of this annual inspection is to verify that Services are being properly performed in accordance with this Agreement. At least two weeks prior to the annual inspection, the Company shall submit to the City three copies of the Company's annual Operation and Maintenance Report. This report shall include detailed information about the completed years operation and maintenance of the Managed Assets and current conditions of the Managed Assets.

In the event that any such inspections reveal work not in accordance with the Agreement or a lack of necessary maintenance or repairs (other than reports necessitating Capital Expenditures) at the Managed Facilities, the City or its authorized agent shall identify such items in writing to the Company. The Company shall perform the repairs and maintenance activities identified by the City on a mutually agreeable schedule.

The Company shall maintain and make available to the City upon request, all records of operating data and information relevant to the Managed Facilities, including accounting and financial records. The Company shall provide the City access to all such records upon request.

2.4.3 OPERATIONS RECORDS

The Company shall maintain a computerized record keeping system for all operation and maintenance functions performed. Records shall include, but not limited to, records of operations, operation and maintenance costs, maintenance procedures,

emergency incidents, personnel, and inventory (equipment and chemicals). Records shall be maintained as required by the Consent Decree, and other Applicable Law. Such records shall include, but not limited to, process evaluation and modification; operating and maintenance activities detailed costs for operation and maintenance; and monthly and annual reports in a format reasonably requested by the City. The City shall have the right to inspect these records upon reasonable notice.

2.4.4 MEETINGS

The City and the Company shall cause their Authorized Representatives or their designees to meet on a monthly basis to discuss performance of the Services, maintenance issues, Equipment conditions, environmental and permit compliance, public relations, and other relevant issues. Minutes of these meetings shall be prepared by the Company and shall be distributed to all attendees. Representatives of the Company shall also be made available to attend and participate in any neighborhood and other community meetings (i.e. City Council, neighborhood civic groups) at the request of the City.

2.4.5 AUDIT

The City shall be responsible for all Capital Expenditures over the term of the Agreement pursuant to the terms and conditions of the Agreement. Within six months of the Commencement Date, the Company shall hire an Independent Engineer, approved by the City. The Independent Engineer shall conduct a complete Wastewater Facility assessment to determine the base line condition of the Wastewater Facility. Periodically, but in any event within sixty (60) days after the close of the fourth (4th), ninth (9th), fourteenth (14th) and nineteenth (19) Billing Years during the Term a comparable assessment in accordance with the requirements of this Section 2.4.5 shall be conducted. The cost of the services provided by the Independent Engineer shall be paid by the Company.

The Independent Engineer will conduct a detailed, comprehensive survey and inspection of the Wastewater Facility and the Pumping Stations to identify the physical and operational conditions and general status of maintenance and repair of all equipment buildings, structures, pavements, grounds, utility lines and system,

spare parts inventories (with a value of \$20,000 or more), operation and maintenance records, etc. The Independent Engineer shall prepare a detailed report documenting findings of the audit. The Report will include an assessment of the current condition of each item or component, its estimated remaining service life, and whether the current condition is consistent with the maintenance and general upkeep requirements of the Agreement and expected normal wear and tear. An estimated cost for repair, renewal or replacement will be included for each item or component which is judged deficient. Estimates will include a reasonable contingency allowance that will vary depending on the nature of the work required.

A draft version of the Independent Engineer's report will be provided to the City for review and comment. In the case of disagreement between the City and Company as to the appraised condition of items or portions of the Wastewater Facility, or estimated cost for repair, renewal, or replacement, the Independent Engineer will make the final decision.

If the findings contained in the final Independent Engineer's report indicate that any deficiency in any part of the Managed Assets is attributed to the failure of the Company to perform predictive, preventative or corrective maintenance, or repairs not necessitating Capital Expenditures in accordance with the requirements of this Agreement, the Company, subject to the provisions of Applicable Law governing public procurement, shall be given the option to make any indicated repair renewal, or replacement, which shall be subject to inspection and approval by the Independent Engineer, or alternatively, shall reimburse the City the cost of repair renewal or replacement as set forth in the Independent Engineer's report. Satisfactory rectification of deficiencies shall be a requirement on a timely basis, subject to the termination provisions of the Agreement for failure to rectify such deficiencies.

2.5 OPERATION AND MAINTENANCE PLAN

The Company shall prepare and submit to the City for review and comment a comprehensive Operation and Maintenance Plan within one hundred twenty (120) days after the Commencement Date. The Operation and Maintenance Plan shall

specify all procedures and tests to be conducted for the performance of the Services, inclusive of all facilities and equipment, throughout the Agreement. The Operation and Maintenance Plan shall be a comprehensive manual organized into separate sections addressing each of the unit process involved. The overall system operation and control, auxiliary system equipment and systems, and grounds and building maintenance for which Company is responsible shall reflect, at a minimum, generally accepted or recommended industry maintenance practices, procedures and standards for municipal wastewater facilities. At a minimum, this Operation and Maintenance Plan shall include the following:

- a. Schedule of expected shutdowns for routine maintenance
- b. Emergency plan of operation, including on-call back up capability.
- c. Copies of all permits, licenses, and other regulatory documents obtained for Company's services, if not previously submitted
- d. Staffing plan showing a breakdown by staff classification of all personnel to be utilized during operation and maintenance
- e. Maintenance Schedule for the Wastewater Facility
- f. Anticipated Capital Expenditures renewal and replacement plan for the Wastewater Facility over the Term of the Agreement
- g. Operations procedures for all major Equipment within the Wastewater Facility during normal, alternate, and emergency operation modes.
- h. List of equipment and system manufacturers/suppliers operation and maintenance manuals
- i. Forms and checklists to be used to monitor Equipment and process system operation and preventative maintenance
- j. Monitoring and reporting requirements
- k. A schedule for updating to the Operation and Maintenance Plan.

Each separate unit process, auxiliary system processes and grounds/building sections of the Operation and Maintenance Plan shall include a detailed written explanation of the following:

- a. The process or system including its key components

- b. The system function including its purpose and normal operating parameters
- c. Equipment summary including nameplate data, supplier/local representatives, and manufacturer
- d. Description of instrumentation and control system, including an alarm summary
- e. Description of normal system operations including startup and shutdown, adjustment of variable functions and settings, interface with other Wastewater Facility systems, routine monitoring checklists and record keeping forms.
- f. Emergency system operations including procedures to be followed in the event of probable plant upset conditions such as temporary power outages, chemical spills, localized or area-wide flooding etc.
- g. Maintenance , including predictive and preventative maintenance for: process functions such as cleaning and hose down, flushing and inspection; mechanical functions such as changing lubricating fluids and filters, checking rotating equipment balance, and changing valve seals and packing; electrical functions such as checking tightness of wiring terminal connections, exercising breakers, and recalibrating meters; instrument and control functions such as sensor calibration, and structural maintenance such as crack repairs and restoration of surface corrosion protection systems.
- h. Trouble shooting system malfunctions
- i. Safety and emergency procedures.

The City will review the draft Operation and Maintenance Plan and return one marked-up copy with comments within thirty (30) days of the initial submittal. The Company shall submit five copies of a final version of the Operation and Maintenance Plan addressing the City's comments within sixty (60) days following

the return of the draft. Neither the review of or comment on, nor failure of the City to comment on, the draft Operation and Maintenance Plan or any modification thereto, shall relieve the Company of any of its responsibilities under the Agreement, be deemed to constitute a representation by the City that operation of the Wastewater Facility pursuant to the Operation and Maintenance Plan will cause the Wastewater Facility to be in compliance with this Agreement or Applicable Law, or otherwise impose any liability upon the City.

The Operation and Maintenance Plan shall dedicate a separate section to detail the Company's maintenance and repair program. Such program shall contain a detailed description of maintenance repair activities which would be required to be performed by the Company over the Term of the Agreement to maintain operability, durability and reliability of the Wastewater Facility which are necessary to achieve such standard of repair by performing all such listed activities within the time frame indicated in the Operation and Maintenance Plan.

2.6 CONTINUOUS OPERATION

The Company shall operate the Wastewater Facility on a continuous basis, twenty-four hours a day, seven days a week, in accordance with the terms and provisions of this Agreement, and in compliance with Applicable Law.

2.7 SAFETY AND SECURITY

The Company shall provide for and maintain security of all facilities and structures associated with performance of Services at the Wastewater Facility. The Company shall develop and submit to the City a Safety and Security Plan within forty-five (45) days after the Commencement Date. The Company shall be responsible and obligated to enforce all safety, security and health laws, rules, regulations, and/or procedures. The Company shall implement an in-house safety program, including, but not limited to, operations, maintenance, safety, management, chemical handling, confined space entry, emergency response, and safety equipment use. Any and all persons entering the Managed Assets shall be identified and provide appropriate documentation of authorization to have such access. The Company is

responsible for providing the appropriate procedures to maintain a log of any and all persons accessing the Wastewater Facility.

The Company shall appoint a Safety Committee. The Safety Committee shall file a copy of any safety recommendation and accident reports. As part of its safety program, the Company shall institute safety standards including a safety information system, regional and corporate specialties, centralized safety equipment procurement system, hazardous materials personnel, a safety information library and a computerized safety equipment preventative maintenance program.

Fences shall be maintained in neat order and structural integrity. Gates, access, points, and doors to the facilities and structures at the Wastewater Facility shall be kept locked. Entrance to such facilities and structures shall be protected against unauthorized entry. The Company is responsible to maintain all security alarms in working order.

2.8 CUSTOMER SERVICE AND EMERGENCY RESPONSE

The Company shall respond promptly (within 2 hours) and in a reasonable manner to all citizen problems and emergencies pertaining to the Managed Assets in accordance with this Agreement. The Company shall maintain a toll-free 24-hour telephone number throughout the term of the Agreement so that citizens can report any problems and emergencies. The Company shall notify the City of any activity, problem, or circumstance of which it becomes aware that threatens safety or health or welfare. The Company shall maintain a log of all problems and emergencies identified and measures taken by the Company to remedy such problems and emergencies. Emergency procedures shall address at a minimum:

- Chemical spills
- Personnel emergencies
- Fire and explosions
- Pipe, valve or pump Failure

- Equipment and process Failure
- Power failure
- Acts of God (i.e. hurricanes, windstorms, and floods)
- Wastewater bypass discharges
- Emergency telephone numbers
- Emergency equipment inventory
- Records preservation
- Coordinate with City regarding Industrial Waste Inventory and Monitoring System
- Coordinating instructions with public safety agencies
- Troubleshooting guides
- Odor events
- Noise events
- Permit violations

**SCHEDULE 3
GUARANTEE**

This Guarantee made as of the ___ day of ___, 202___, by _____, a _____ Corporation ("Project Guarantor"), having its principal place of business in _____, to and for the benefit of the City of New Bedford ("City").

WITNESSETH:

WHEREAS, _____, a _____ corporation, (the "Company") having an office at _____, ~~has entered into the Agreement For Operation, Maintenance And Management Services (the "Agreement") with the City dated as of _____, 202___.~~

WHEREAS, Project Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, City would not enter into the Agreement unless the Project Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the City to enter into this Agreement, Project Guarantor agrees as follows:

1. Project Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Agreement in accordance with the terms and conditions therein.
2. This Guarantee shall be governed by the laws of the Commonwealth of Massachusetts exclusive of the choice of law rules thereof, and Project Guarantor hereby agrees to the service of process in the Commonwealth of Massachusetts for any claim or controversy arising out of this Guarantee or relating to any breach hereof.
3. This Guarantee shall be binding upon and enforceable against the Project Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Project guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee, and is for the benefit of the City, and any permitted successors and assigns under the Agreement.

4. This Guarantee may be enforced by the City without first resorting to any action against Company or exhausting any other remedies that the City may have.
5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the City as each cause of action arises. Project Guarantor waives presentation to, demand of performance from and protest to the City of the obligations of the City under the Agreement.
6. No failure or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.
7. Project Guarantor may not assign its obligations hereunder without the expressed written consent of the City, which shall not be unreasonably withheld except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Project Guarantor. Notice of any such assignment shall be given in writing to the City within thirty (30) days of the effective date of any such merger, consolidation or transfer.
8. The respective obligations of Project Guarantor to the City set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that City first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Project Guarantor hereunder, and shall not be subject to any claim of Project Guarantor against any other Person including the City, other than a claim that the matter giving rise to the City's claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the Commonwealth of Massachusetts.
9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Project Guarantor solely and exclusively for the benefit of the City and may be enforced against Project Guarantor by the City.
10. Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

Project Guarantor at: (Name) _____

If By Mail: (Address) _____

If By Hand: (Address) _____

City at: (Name) _____

If By Mail: (Address) _____

If By Hand: (Address) _____

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

IN WITNESS WHEREOF, Project Guarantor has executed this instrument under seal the day and year first above written.

ATTEST:

ACCEPTED:

By _____

SCHEDULE 4 INSURANCE

Workers Compensation

Statutory benefits as defined by the Commonwealth statutes encompassing all operations contemplated by this contractor agreement to apply to all of the Company's officers, and employees regardless of the number of employees. Employers Liability will have minimum limits for bodily injury by accident of \$500,000 per accident and for bodily injury by disease with a \$500,000 policy limit and \$500,000 per employee.

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures on an occurrence basis, with limits of \$1,000,000 per occurrence, and \$2,000,000 aggregate.

Business Automobile Liability

Coverage shall apply to Company-owned vehicles and/or non-owned vehicles and employee non-ownership use with limits of \$1,000,000 CSL (combined single limit).

Umbrella Liability

Coverage shall apply to general liability, automobile liability and Employer's Liability conforming to the minimum underlying requirements of the umbrella. Limits of \$5,000,000 per occurrence.

Certificate of Insurance

The City shall be listed as a certificate holder and an Additional Insured with respect to Commercial General Liability, Business Automobile Liability and Umbrella Liability coverages.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/02/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA, Inc. 540 W. Madison Street Chicago, IL 60661 Attn: Veolia CertRequest@marsh.com Fax: 212-948-5053	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED Veolia Water North America - Northeast LLC 53 State Street Boston, MA 02191	INSURER A: National Union Fire Insurance Company Of Pittsburgh, 19445	
	INSURER B: New Hampshire Insurance	
	INSURER C: ACE Property and Casualty Insurance Company, 20699	
	INSURER D: Illinois National Insurance Company, 23817	
	INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CHI-009519221-03 **REVISION NUMBER:** 10

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER		GL5425835	01/01/2020	01/01/2021	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 25,000,000 PRODUCTS - COM/PROP AGG \$ 10,000,000 \$	
A	AUTOMOBILE LIABILITY		CA9767418 (AOS)	01/01/2020	01/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000	
A	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		CA9767419 (MA) CA9767420 (VA)	01/01/2020 01/01/2020	01/01/2021 01/01/2021	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$	
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		XOO G27927865 005	01/01/2020	01/01/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	WC 046-91-2802 (AOS) WC 046-91-2803 (AZ, IL, KY, NC, NH, NJ, PA, UT, VA, VT) WC 046-91-2804 (FL)	01/01/2020 01/01/2020 01/01/2020	01/01/2021 01/01/2021 01/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
CITY OF NEW BEDFORD is included as additional insured (except workers' compensation) where required by written contract. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and where required by written contract. A waiver of subrogation is granted as required by written contract but only for liability arising out of the operations of the named insured.

CERTIFICATE HOLDER CITY OF NEW BEDFORD 1105 Shawmut Avenue New Bedford, MA 02746	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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AGENCY CUSTOMER ID: CN107290802

LOC #: Chicago



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Marsh USA, Inc		NAMED INSURED Veolia Water North America - Northeast LLC 53 State Street Boston, MA 02191	
POLICY NUMBER		EFFECTIVE DATE	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Workers Compensation (Cont)

Carrier: Insurance Company of the State of Pennsylvania
Policy Number: WC 046-91-2805 (MA, ND, OH, WA, WI, WY)
Effective Date: 01/01/2020
Expiration Date: 01/01/2021
Limit: SEE ABOVE

Carrier: American Home Assurance (NAIC # 19380)
Policy Number: WC 046-91-2806 (CA)
Effective Date: 01/01/2020
Expiration Date: 01/01/2021
Limit: SEE ABOVE

Veolia Water North America-Northeast LLC has agreed to provide 30 days notice of cancellation of the insurance policies referenced above and 10 days notice in the event of cancellation due to non-payment of premium. Veolia Water North America-Northeast LLC or its designee will send such notice to the Certificate Holder of this Certificate. Such notice is not a right or obligation within the policies, it does not alter or amend any coverage, it will not extend any policy cancellation date and it will not negate any cancellation of the policy. Failure to provide a copy of such notice to the Certificate Holder shall impose no obligation or liability of any kind upon the insurer or its agents or representatives.

SCHEDULE 5
OPERATION AND MAINTENANCE FEE

OPERATION AND MAINTENANCE FEE

Base Bid including Pumping Stations

The Base Bid consists of the Company being responsible for the operation and maintenance of the Wastewater Facility plus 29 Pumping Stations (Alternate Bid 2). This fee shall be for the Wastewater Facility producing Liquid Sludge consistent with the requirements previously set forth. The Operation and Maintenance Fee to be paid the Company for each Billing Month during the Term of the Agreement shall be one-twelfth (1/12th) of the annual amount set forth below in Table S5-1, as adjusted from time to time pursuant to this Schedule 5.

**TABLE S5-1a, Base Bid
OPERATION & MAINTENANCE FEE ¹**

WWF Liquid Sludge Operation & Maintenance Fee ¹	\$ 4,009,023
Pumping Station Operation and Maintenance Fee (Alternate Bid 2)	\$684,185
Total Operation and Maintenance Fee, Liquid Sludge	\$4,693,208
Date of Operation & Maintenance Fee Escalation ² :	[<u>7/1/2021</u>]
Operation & Maintenance Fee Escalator (% of CPI, 100% maximum)	[<u>100</u>]%

Note:

- (1) Operation and Maintenance Fee provided shall be an annual amount.
- (2) The annual Operation and Maintenance Fee Escalation shall be set as of July 1 of each contract year starting with July 1, 2021 and carried through the entire contract term based on the CPI change from April 1 to March 30 of the previous year and carried through the entire contract term. The Date of Operation and Maintenance Fee Escalation and Operation and Maintenance Fee Escalator shall apply to the Agreement term of 10 years, with two 5-year options.
- (3) Operation and Maintenance Fee excludes Renewal and Replacement Fund amounts as further noted in Article VI.

The Operation and Maintenance Fee Escalator shall be 100% of CPI, and the Date of Operation and Maintenance Fee Escalation shall be effective July 1 of each year subsequent to the Commencement Date.

For example, the CPI for March 2018 was 251.586 and the CPI for March 2019 was 254.725, therefore the annual Operation and Maintenance Fee would be adjusted, as of July 2019 as follows:

Total Operation and Maintenance Fee, Year 1 X 254.725/251.586

Total Operation and Maintenance Fee, Year 1 X 1.0124768 = Annual Service Fee, Year 2

Alternate Bid 1 including Pumping Stations

Alternate Bid 1 consists of the Company being responsible for the operation and maintenance of the Wastewater Facility plus 29 Pumping Stations (Alternate Bid 2). This fee shall be for the plant producing dewatered sludge cake consistent with the requirements set forth in the RFP for sludge requirement to generate dewatered sludge cake at a concentration between 22 and 28 percent solids. The Operation and Maintenance Fee to be paid the Company for each Billing Month during the Term of the Agreement shall be one-twelfth (1/12th) of the annual amount set forth below in Table S5-1b, as adjusted from time to time pursuant to this Schedule 5.

**TABLE S5-1b, Alternate Bid 1
OPERATION & MAINTENANCE FEE ¹**

WWF, Dewatered Sludge Cake Operation & Maintenance Fee ¹	\$ 4,782,584.00
Pumping Station Annual Operation and Maintenance Fee (Alternate Bid 2)	\$684,185
Total Operation and Maintenance Fee, Dewatered Sludge	\$5,466,769
Date of Operation & Maintenance Fee Escalation ² :	[7/1/2021]
Operation & Maintenance Fee Escalator ² (% of CPI, 100% maximum)	[100]%

Note:

- (1) Operation and Maintenance Fee provided shall be an annual amount.
- (2) The annual Operation and Maintenance Fee Escalation shall be set as of July 1 of each contract year starting with July 1, 2021 based on the escalation change from April 1 to March 30 of the previous year and carried through the entire contract term. The Date of Operation and Maintenance Fee Escalation and Operation and Maintenance Fee Escalator shall be apply to the Agreement term of 10 years, with two 5-year options.
- (3) Operation and Maintenance Fee excludes Renewal and Replacement Fund amounts as further noted in Article VI.

The Operation and Maintenance Fee Escalator shall be 100% of CPI, and the Date of Operation and Maintenance Fee Escalation shall be effective July 1 of each year subsequent to the Commencement Date.

For example, the CPI for March 2018 was 251.586 and the CPI for March 2019 was 254.725, therefore the annual Operation and Maintenance Fee would be adjusted, as of July 2019 as follows:

Total Operation and Maintenance Fee, Year 1 X 254.725/251.586

Total Operation and Maintenance Fee, Year 1 X 1.0124768 = Annual Service Fee, Year 2

6.1 RESPONSIBILITIES

City Permits

It is anticipated that the following Permits will be required to be maintained in the name of the City in connection with the operation of the Wastewater Facility:

- National Pollutant Discharge Elimination System (NPDES) Permit MA 0100781
- Massachusetts State Permit No. 120
- Massachusetts Air Quality Permit No. 4P91055

The Company shall be responsible for assisting the City with renewing and/or obtaining and maintaining all applicable federal, state and local approvals and/or permits required for the Wastewater Facility. The Company shall be responsible for preparing all applicable reports pertaining to any and all such Permits in compliance with federal, state and local requirements for submission by the City to the appropriate agencies.

Company Permits

It is anticipated that the following Permits/Licenses will be required to be maintained in the name of the Company in connection with its performance of Services:

- Operator licenses
- Electrician licenses
- Laboratory certification

The Company shall obtain all appropriate licenses and certifications required for performance of the Services. All such licenses, permits, and certificates will be kept current any required licenses, permit and certificates fees will be borne by the Company, without reimbursement from the City.

The Company shall comply with, satisfy, and pay all costs and/or fees associated with all regulatory requirements pertaining to the permits, but not limited to, public notification in the event of non-compliance with wastewater treatment standards.

SCHEDULE 7
MAXIMUM UTILITIES UTILIZATION

Electricity costs will be paid by the City up to the maximum usage set forth in this Schedule 7 and assuming annual flows of between [Base flow set forth in earlier schedule plus or minus 10 percent). The costs for electrical consumption exceeding the maximum usage as set forth will be the Company's financial responsibility and the City will not reimburse the Company for the incremental consumption above the specified limit provided the plant does not exceed a daily average of 24.64 MGD.

7.1 Base Bid

TABLE S7-1a, BASE Bid
MAXIMUM UTILITIES UTILIZATION
WASTEWATER FACILITY

Item	Maximum Usage KWH/Year
Utilities:	
Electricity	_____11,657,655_____ kwh
Adjustment per MG of flow outside specified range	_____1,426_____ kwh/mg

1. **Maximum Utilities Utilization Wastewater Facility – Electricity, Maximum Usage KWH/Year**
The usage CAP will not apply to periods when the Wastewater Facility is removing nitrogen.
2. **Maximum Usage KWH/year shall be calculated based upon the 12 prior non-nitrifying months.** For periods when the facility is removing nitrogen, actual average monthly values from this non-nitrifying period shall be inserted. For partial nitrogen removal months, values shall be weighted for non-nitrogen removal and nitrogen removal KWH usage.

SCHEDULE 8

EQUIPMENT AND CHEMICALS INVENTORY

Within 30 days subsequent to the Commencement Date, the Company shall conduct a physical inventory and prepare an up-to-day report of equipment and chemicals located throughout the Wastewater Facility. The inventory report shall be attached to this Schedule 8 and contain, but not be limited to, the following information relative to the Equipment and chemicals of the Wastewater Facility:

- Detailed description of items
- Date of purchase
- Identification number (i.e., serial number), if applicable
- Manufacturers name
- Quantity (i.e., gallons of chemicals), by type of chemical

For the term of the Agreement, the Company shall maintain a physical inventory of City's vehicles, chemicals and Equipment in use at the Wastewater Facility. Unless otherwise approved by the City, the Company shall provide the City with the same dollar value of equipment, parts and chemicals upon termination of the Agreement.

SCHEDULE 9
PASS THROUGH COSTS

Pass Through Costs shall be paid by the City for both the Wastewater Facility and the 29 Pump Stations, based on satisfactory documentation provided by the Company to the City demonstrating that such costs have been incurred and are applicable pursuant to the provisions of the Agreement. Pass Through Costs shall be identified on the City's monthly invoices as separate line items and shall include:

The following costs are Pass Through Costs pursuant to the Agreement:

- Potable water
- Insurance costs
- Performance bond

The following specifically are not Pass through Costs based on Veolia Proposal and Negotiations, payment of which are the responsibility of Veolia:

- Natural Gas (Heating at Wastewater Facility and Pump Stations)
- Communication (telephone)
- Generator fuel (Pump Stations)
- Telemetry (Pump Stations SCADA)

Contract year 1

Insurance Costs	\$59,418.00
Performance Bond	\$25,966.00

The costs for subsequent years will be adjusted based on the Operation and Maintenance Adjustor.

SCHEDULE 10 PERSONNEL

10.1 GENERAL

The Company shall provide staff qualified and experienced in the operation, maintenance, and management of wastewater treatment systems similar in nature and character to the Wastewater Facility. The Company shall also provide additional third-party support, on an as needed basis, to perform its duties and obligations of this Agreement. Such third parties shall be equally qualified for the specific services to be performed.

The Company is responsible for maintaining the 28 (Wastewater Facility), 3 (Additional if Cake dewatering is necessary) and 4 (Pump Station) agreed upon number of staff and third-party contractors and as deemed appropriate to operate, maintain and manage the Wastewater Facility and 29 Pump Stations (System) in accordance with the provisions and terms of this Agreement and set forth in their proposal to the City. The failure to maintain those staffing levels as specified will subject the Company to financial penalties as set forth herein. The Company shall:

- Provide qualified management, supervisory, technical, laboratory, operation and maintenance personnel.
- Staff the Wastewater Facility with sufficient qualified, trained employees who have met the certification requirements of the MADEP, as necessary, and meet state minimum staffing level requirements.
- Provide a management team consisting of a Project Manager, Operations Manager, Assistant Project Manager/Maintenance Manager and Laboratory Manager that shall be dedicated to the New Bedford system. The dedicated management team shall have the qualifications as set forth in Section 3.1.7 and this Schedule 10. Failure to maintain this dedicated team will result in financial penalties as set forth in Section 5.6.3.
- Provide personnel who are qualified, experienced and have the proper certification to satisfy all regulatory requirements. The staff should be thoroughly trained in modern process control, equipment operation and maintenance, sampling and analysis procedures, energy efficient operation, regulatory compliance requirements, and occupational health and safety procedures.
- Provide duly licensed and certified personnel hired or contracted by the Company to perform the services defined in the Operation and Maintenance Plan as required by the state and any other applicable regulatory agencies.
- Provide specialists, as necessary, for process control, instrumentation, troubleshooting, emergency management, and other similar activities. Required skills will include but are not necessarily limited to electrical, plumbing/pipefitting and welding. The City expects that these capabilities will be resident within the team at the Wastewater Facility and will not reimburse the Company if it finds it necessary to subcontract for these requirements or use staff from other facilities.

- Provide office and clerical support staff.
- Provide technical support to provide on-call backup and process expertise for process control, management, maintenance and repair, as necessary, to support operation and maintenance staff in performing the services of this Agreement.
- Develop an appropriate bargaining agreement with the employees' selected bargaining unit.
- Provide a dedicated, on-site Project Manager at the Wastewater Facility to oversee and manage performance of Services including coordination with other contractors for the Wastewater Facility and Pumping Stations (i.e., Synagro sludge management contract).
- Provide a training program for all personnel, including operations, maintenance, safety, management skills, laboratory, and energy management. Such training shall include both plant specific and general treatment material.

10.2 STAFFING PLAN

The Company shall submit 30 days after execution of Agreement to the City a staffing plan for the personnel requirements during both the transition phase and the long-term operations taking into account the City has accepted both Bid Alternates 1 and 2. This staffing plan shall be consistent with that included in the Company's proposal; the failure to maintain consistency may result in termination. The Company shall include, at a minimum, in this staffing plan the following in accordance with the provisions of this Agreement:

- Organization chart
- List of all personnel required
- Job classifications and wage rates for union employees
- Number of staff required for the transition phase and long-term operations
- Resumes and qualifications of personnel assigned to perform Services

The Company shall notify the City of any change in personnel within 10 days effective of such personnel change which is subject to review and approval of the City. Failure to maintain the staffing complement in accordance with the requirements specified herein will subject the Company to financial penalties.

10.3 TRAINING PROGRAMS

The Company shall provide training programs for all personnel employed for performance of Services for the Agreement. Such training shall include, but not limited to, modern process control, equipment operation, repair, and maintenance, sampling and analytical procedures, regulatory requirements, supervisory skills, and safety and occupational health procedures. The Company shall maintain records of the training programs.

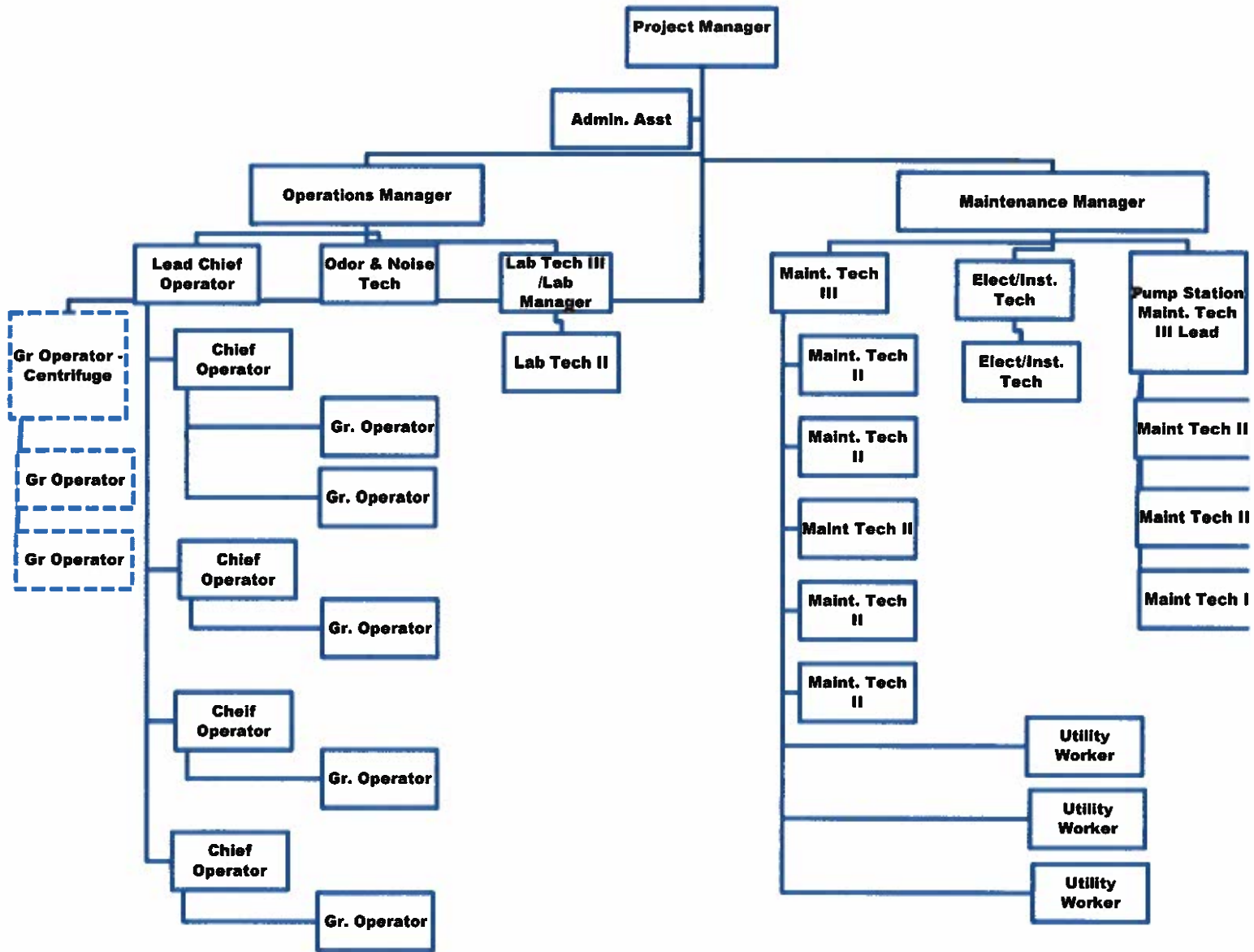
No later than 30 days prior to the Commencement Date, the Company shall submit five copies of a draft Operator Training Plan (Training Plan) for review and comment by city. The Training Plan shall clearly define the classroom and hands-on training curriculum for each operator position and classification. Calendar dates and milestones shall be assigned to each portion of the training and a training schedule shall be submitted in the Training Plan. The date and duration of on-site training by each of the equipment manufacturer's technical representatives will be shown in the schedule.

City will review the draft Training Plan and return one marked up copy with comments and required corrections within 30 days of the initial submittal. The Company shall submit five copies of a final version of the Training Plan incorporating City requested changes and comments 30 days following the return of the draft version.

10.4 EXISTING EMPLOYEES

The Company is encouraged to offer, but is not obligated to offer, employment to employees of the City's current Company of the Wastewater Facility. However, the City anticipates that it will retain its existing employees currently responsible for the pumping stations.

Organization Chart



Employees denoted by dotted lines would be implemented should Alternate 1 (Cake Sludge) be necessary.

SCHEDULE 11
COST ADJUSTMENT METHODOLOGY

The following data shall be employed to adjust the service fee for increases and decreases in flows and loads that exceed 10 percent of the base year influent parameters. The Service Fee shall be increased when flow and loads increase by more than 10 percent and the Service Fee shall decrease when flow and loads decrease by more than 10 percent. This adjustment will apply only to the increment of flow and load in excess to the 10 percent limit. The adjustments will be paid or credited at the end of each contract year, based on the cumulative data for each contract year.

Base year parameters are as follows:

	Flow-MGD	BOD-lbs/day	TSS-lbs/day
Base Year	22.4	49,829	35,423
10 % floor	20.16	44,846	31,881
10 % ceiling	24.6	54,812	38,965

Base Bid adjustment factors are as follows:

Flow-MGD	BOD-lbs/day	TSS-lbs/day
\$ 42.13/MG	\$ 0.27/100 lbs. BOD	\$ 0.69/100
lbs.		

Bid Alternate 1 adjustment factors are as follows:

Flow-MGD	BOD-lbs/day	TSS-lbs/day
\$ 42.13/MG	\$ 1.16/100 lbs. BOD	\$ 2.57/100

Schedule 12

BOND NO. _____

PERFORMANCE BOND

CITY OF NEW BEDFORD

MASSACHUSETTS

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as **Principal**,
and

_____, as
Surety,

are held and firmly bound unto the City of New Bedford, Massachusetts, as **Obligee**,
in the sum of _____ **dollars**
(\$_____)

to be paid to the **Obligee**, for which payments, well and truly to be made, we bind ourselves, our
respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS, the said **Principal** has made a contract with the **Obligee**, bearing the date of _____,
20__

for the _____ in _____,
Massachusetts.

PROJECT TITLE

NOW, the condition of this obligation is such that if the **Principal** and all Subcontractors under said
contract shall well and truly keep and perform all the undertakings, covenants, agreement, terms and
conditions of said contract on its part to be kept and performed during the original term of said contract
and any extensions thereof that may be granted by the **Obligee**, with or without notice to the **Surety**, and
during the life and any guarantee required under the contract, and shall also well and truly keep and
perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized
modifications, alterations changes or additions to said contract that may hereafter be made, notice to the
Surety of such modifications, alterations, changes or additions being hereby waived, then this obligation
shall become null and void; otherwise, it shall remain in full force and virtue.

IN THE EVENT, that the contract is abandoned by the **Principal**, or in the event that the Obligee terminates the employment of the **Principal** or the authority of the **Principal** to continue the work, said **Surety** hereby further agrees that said **Surety** shall, if requested in writing by the Obligee, take such action as is necessary to complete said contract.

IN WITNESS WHEREOF, the **Principal** and **Surety** have hereunto set their hands and seals this:

_____ Day of _____ 20____

PRINCIPAL _____

SURETY

By: _____

By:

SEAL

ATTORNEY-IN FACT

Attest: _____

Attest:

SCHEDULE 13
CAPITAL IMPROVEMENT PROJECTS in PROGRESS

There are no City Capital Improvement Projects planned at time of contract signing.

Schedule 14

Wastewater Facility Description

The Wastewater Facility is a Grade 7 secondary treatment plant designed to treat average daily flows of 30 mgd and peak daily flows of 75mgd. The Wastewater Facility commenced operation in August 1996.

The Facility includes the following major components:

- Plant headworks include influent sewer, influent pumping and preliminary treatment;
- Primary treatment;
- Secondary treatment;
- Disinfection; chlorination and dechlorination
- Sludge processing facilities;
- Odor control facilities; and
- Plant utilities.
- 29 sewage Pumping Stations

The treatment process is designed to reduce both biochemical oxygen demand (BOD) and total suspended solids (TSS) to less than 30 milligrams per liter (MG/L) in the effluent on a monthly average. The secondary treatment process used is activated sludge with diffused air. The activated sludge process consists of two independent operations; aeration and clarification.

In the aeration process, air is mixed with the wastewater in aeration tanks to biologically reduce the waste concentration. The Wastewater Facility aeration tanks were sized to accommodate flows and loads expected at high groundwater average day flow conditions. Aeration equipment and blowers were sized to meet the oxygen demand at peak loading conditions. The total aeration tank volume is 7.3 million gallons divided into six tanks. These tanks are enclosed to contain odors. Air is drawn from the aeration tanks through a wet scrubber for treatment prior to being released into the atmosphere through elevated stacks.

Following the aeration process, the wastewater flows to the secondary clarifiers where the biological solids are separated from liquid. The separated solids are removed from the clarifiers and recycled to the aeration tanks to maintain the biological process. The clarified water from the secondary clarifiers is disinfected and then discharged to the plant outfall.

Primary sludge is gravity thickened and blended with waste activated sludge, scum and grease for further thickening via gravity belt prior to being shipped for disposal.

The Company's obligation also extends to O&M of the City's 29 Sewage Pump Stations. See listing below:

	Pump Station	Address
1	Belleville Avenue	618 Belleville Ave.
2	Coggeshall Street	200 Coggeshall St.
3	Cove Road	1095 Cove Rd.
4	Dottin Place	175 Amanda Ave.
5	East Rodney French	1699 East Rodney French Blvd.
6	Forbes Street	1110 Forbes St.
7	Fort Tabor Park	1000 South Rodney French Blvd.
8	Front Street	249 MaCarthur Dr.
9	Hall Estates	AppleTree Lane
10	Hanover Street	172 Hanover St.
11	Hathaway Road	388 Hathaway Rd.
12	Howard Avenue	99 River Rd.
13	Howland Street	28 Howland St.
14	Industrial Park	107 Duchaine Blvd.
15	Jones Street	41 Aviation Way
16	Joyce Street	1189 Joyce St.
17	Marlborough Street	1112 Marlborough St
18	Merrimac Street	41 Merrimac St.
19	Peckham Road	Northwest Street
20	Pequot Street	1149 Pequot Street
21	Pope Island	86 Pope's Island
22	Potter Street	357 Potter St.
23	Rowe Street	149 Wilbur St.
24	Sassaquin Avenue	1477 Sassaquin Ave.
25	Shawmut Avenue	1482 Shawmut Ave.
26	Valley View Road	74 Valley View Dr.
27	Wamsutta Street	38 Wamsutta St.
28	Welby Road	55 Welby Rd.
29	Zuckerman Farms	96 Joy Road